THE

LAW OF FIRE AND LIFE INSURANCE,

WITH

THE LATEST DECISIONS,

AND

An Appendix,

CONTAINING TABLES FOR THREE LIVES, TABLES FOR BENEFIT CLUBS, AND OTHER PRACTICAL RULES AND TABLES.

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PREFACE.

THE authority of Mr. Babbage seems to make Life Insurance an exception to that legal idea of Insurance, namely, that it is a contract of indemnity as distinguished from a wager (*a*).

Mr. Babbage thought Marine Insurance to be distinguished by the circumstance of the claim of the insured depending on his right *to abandon*, and of such claim upon a *capture* being defeated by a *re-capture*, and that Life Insurance is distinctly void of any corresponding limitations of the claim. Now in the case of *Godsol* v. *Boldero*, the Court expressly went upon an analogy between the claim on *capture* and *re-capture*, and that of the case before them, namely, a claim on the ceasing of a life being defeated by the subsequent liquidation of the debt in respect of which the persons insured were interested in that life. And their decision against the claim in *Godsol* v. *Boldero* was soon afterwards made the ground of a similar decision of two cases in Marine Insurance upon a question of right to *abandon* as for a total loss (*b*). That insurance is an indemnity, and not a wager, Mr. Justice Buller is a distinct authority (*Mason* v. *Sainsbury*, 2 Marsh. Ins. 796, 3d edition). "The contract really is an indemnity,

(*a*) Mr. Babbage also uses "Assure" and "Insure," as having distinct meanings. It appears, however, that the two words only differ as "enfeeble" and "affaiblir," which have both the same meanings; the one having the Saxon prefix the other the French or Latin. So "sweeten" and "adoucir," "shorten" and "accourcir," "enfranchise" and "affranchir," &c.

(*b*) *Bainbridge* v. *Neilson*, 10 East, 345. *Brotherston* v. *Barber*, 5 M. & S. 423.

ruled that the Commission just mentioned had no jurisdiction in matters of Life Insurance. (*Bender* v. *Oyle*, Style, 166.) When Justice Park published his treatise, he remarked, "But when insurance in general is spoken of by professional men, it is generally understood to signify Marine Insurance." Mr. Babbage, in his recent work on Life Insurance, informs us, that at the first introduction of Life Insurance Associations the common rate was 5 per cent., and for middle-aged persons above that rate: that in 1762, the Equitable proceeded on tables calculated from bills of mortality of London, and after nineteen years on the Northampton tables, adding 15 per cent., and after five years they used the latter table without the 15 per cent. The further mention of those authors, from Halley to Babbage, who have brought science to the aid of commerce in this particular, cannot find room here. The reader is particularly referred to the latter writer; see his Chapter vii. p. 136, on the loss which may ensue the careless adoption of a scheme or Institution of Assurance.

PREFACE TO THE SECOND EDITION.

In re-editing this compendium of the Law and Practice of Fire and Life Assurance, I have appended a *Fourth Part*, consisting of Tables, many of them not before published, and rules for working the more usual transactions, comprehending also the leading questions of Endowment and Benefit Societies; and a comparative review, from such data as were accessible, of the various systems of dividing profits, or modifying by a "Bonus," the error of calculation by the usually adopted scale called the "Northampton Rate" introduced into Assurance transactions within the last quarter of the Eighteenth Century.* The Chapter on Companies has necessarily been re-cast, the recent enactments respecting Joint Stock Companies having placed them on a new basis.

Urged by the representations of friends and the great complexity of the cases on Assurance *Interest*, (See an excellent exposition of these in the "Leading Cases" of the lately deceased and accomplished J. W. Smith, under the case "*Godsol* v. *Boldero*,") I would pass that subject and the comprehensive enactment of the era of the "*South Sea Bubble*," appertaining thereto, under review, so far as may be allowed within the limits of a preface.

* These do not comprise calculations for the enfranchisement of Copyholds, the value of next presentations to livings, Deferred Annuities or Rent charges, and those for a limited period of life, and some others not calculated for reference by the class of readers contemplated in the general scope of this publication, for which, they are referred to any of the received systems of Tables either of an earlier date, or of the recent period of the publications of Messrs. Finlaison, Ellis, M'Kean, and others the omission of whose names here must be imputed to no under-estimate of their merits.

The Statutes (Geo. II. c. 37, and 14 Geo. III. c. 48) take up Insurance, "Interest or no Interest," (then lately introduced,) on the footing of a wager against public morals and the common weal. This dealing with the subject was probably in reference to the largeness of the stake or interest of the "Assurers," who have necessarily a community of goods with the bulk of honest policy-holders: for a wager by *Policy* of Assurance is no less a wager than any other, and wagers except against public morals, are allowed by the Courts as is hereafter stated. A joint-stock is necessary to any dealing in contingencies, a scale of probabilities is made on a plurality of transactions, a single-handed wager, wagerer, or insurer, must carry on a losing business.

The "*policy*," in its Spanish original (*poliça*, Ital. *polizza: polizza di lotto*—lottery-ticket) means a warrant on a treasury, common stock, or public fund. Fraudulent attempts upon this insurance fund of late years, have introduced into our law-reports nine cases out of ten that appear under the title "insurance," while some of these reach the verge of human depravity, extending to murder premeditated, at the date of their contracts of life assurance. These warnings as to the relaxation of provisions against wagering on the wholesale scale of the insurance interest, are sufficiently seconded by other considerations. Not only are large aggregate deposits to be found where they are husbanded for insurance purposes, but there is in this country much of small and large surplus capital, (but a much larger proportion in small amounts) and there has been (perhaps we have now,) an epoch when this great and necessary fund was threatened to be undermined by wagering. At a former period the legislature stept in with an enactment against this assault, then assuming the form of assurance, and its *poliça* or contingent draft on the insurance fund. When it shall have been made out to demonstration how much actual *railway* work can be accomplished in our island within a year of average exertion, and drawing upon our average means, and when it shall have been demonstrated that the earnings of the lines will pay *five, four, three*, or even *two* per cent. on the outlay, then it may be conceded, as the

case may prove, that stock-jobbing is or is not strictly enough under control, that shares in a *bubble*, and deposits of value, are co-relative and equivalent, and that the contingency of so many tons of traffic per mile, in any and every direction, are allowable wagers, though they bury the means of millions under the gradients of a new line—or that it is time the law should pronounce its bann against wagers, whether in the form or under the name of "policy," "scrip," or whatever other it may assume, where there is on the one side no property in *esse* nor in *posse*, neither goods nor *defined profits;* in short, nothing to lose on the contingency, which makes the other party's loss or liability to pay; nothing on the one side but a wager, on the other a deposit of the stakes, or bank for all comers. Where gambling is advancing on a wholesale scale, it involves the patronage or participation of respectable classes, perhaps drawn into the new business without calculation of its tendencies, and forwarding it with a zeal proportionate to the interest staked on the results of the preliminary steps that come within the province of the practitioner, It may require a few years to prove to those authorizing, promoting, or ushering in the *bubble*, the true character of their business, but in the mean time, the means of individuals to a vast aggregate will have been frittered away, and thousands of households broken up to be remodelled here on a reduced scale, or transplanted to the wilds of Australia, or the woods of New Zealand; while the labour-markets engaged in our ordinary supplies are deranged, wages fall, and commerce trembles on the precarious base it has to occupy, as if in a country where none are "beforehanded" or have reserves for the staples or the "plant" of a trade. The *legislature* may have become a party to and promoter of the reigning delusion: a candidate for admission upon the "standing orders" is on higher ground than a new shop resting on its hand-bill or advertisement; and the character of the Imperial Parliament—of England—of the British Empire, suffers in comparison with other countries, where the technical objection of "a money bill" has not prevented a public work, pretending to be useful and remunerative, being

taken up by some department of the executive, free from local prejudices or attachments, not *pledged* to this scheme or another. If this action should imply any deficiency in the legislature, and that department of the State would assume the initiative, they should have been prepared, not with "standing orders" in furtherance of schemes, but with a law limiting future proposals of that nature; failing this, and the executive wanting power to introduce the limit, both departments of the state should have stood aloof, should have left the gambling phrenzy to have worked out its results, leaving the settlement of purchases of the soil, through the length and breadth of the land, to a jury, wherever the road-interest should choose its lot, and not have waited till the Imperial Parliament was levelled down to the attitude of a private bill chamber, or central court of railway arbitration, paralyzed by a weight of baseless, not to say fraudulent projects, as ever flooded a community of partial views and loose credit.*

Whether the new means of locomotion will bring us morally and socially nearer the continental nations, or whether the wisdom of our Courts of Law and Legislature will keep pace with the activity of physical science, remains yet to be seen. Lord Mansfield brought rich draughts to our reports from the "civil law," and from the commercial code of Europe; had he presided in a Court of Equity, he would perhaps, from the former source, have drawn illustrations for our cases of Vendor and Purchaser, and in conformity with the civil code, have decided in what proportion a misrepresentation of value (*one-third* at civil law,) should release the purchaser from his bargain. The law of joint-stock companies now conformed, as to partial or limited liabilities of shareholders, with continental laws and customs, would perhaps not have

* The above paragraph has grown beyond the proportions intended for it: but may it not be fairly added that the legislature are trifling with their powers, in issuing a commission, whose report looks for adoption, on the subject of the "gauge," or width of railways, and neglecting to make any prospective limit, or to adopt any intelligible limit to the *length* of railway lines?

passed through so many shifts and changes to its present position, if the *South Sea Bubble* had not thrown its shadow over the era preceding that in which the decisions of our great Jurist shone out. The law or decisions allowing wagers and disallowing wagering assurance, but permitting, as far as the Committee of the Stock Exchange concur, the practice of *stock-jobbing*, is a state of confusion and woeful acknowledgment of lingering barbarism, that attaches to the "*Penitus toto divisos orbe Britannos.*" The judgment of the Tribunal of Correctional Police for the department of the Seine, (*on Friday last, February* 22) in part vindicates their law limiting the business of the *Stock Exchange*, by inflicting penalties, by fine, by exclusion (in one instance,) of the offender from his employment as a stock broker, and by the costs of the prosecution on three individuals dealing in railway *scrip*, (*eventualitès*) and of three members of the Stock Exchanges of Rouen and Havre, for aiding therein, and participating in the profits in contravention of the 85th Article of the commercial code, and of the law of the 15th of July, 1845. Such action of the judicial department of the State is intelligible, while our latest cases, allowing a *jus retractûs* to the deluded scrip-holder, against the last holder, sanctions the wager, and secures the stakes to the wholesale culprit for a time, and makes the *job* only bad for the *excess* of jobbing.

The reader will excuse perhaps, this digression adverting to a state of confusion in commerce that can scarcely be expected to recur in a century, and pointing back to the era of the enactment of the law regulating insurance transactions. When property has accumulated in masses, fraudulent inroads upon it become a department of trade (this is an adage better expressed somewhere); better, far better, that any ascertained surplus capital of the community, after providing reversions in the way of assurance, (where such domestic provision is requisite,) were periodically removed *de medio*, the government making a first bidding for the fund which they may set apart as a fund for "contingencies," always looking to the wants of the country, suggested by a new and

improved locomotive power, or to any other useful outlet for investments, in furtherance of commerce, industry, employment, and the diffused supply of food, comfort, or intelligence. Better so than worse. In the mean time, one species of wholesale gambling, or of blind dependence on contingent returns, may perhaps be allowed to throw light on the wisdom of restricting insurance *wagers*, (if every provision or deposit staked upon a contingency deserve that term,) to the well-defined and perfectly understood principle of "interest" in the assured "indemnity" in the assurance and assurer. When the interest has commenced and becomes discontinued, as where a ship commences a voyage but stops ultimately at an intermediate port short of its destination, there, by the custom of merchants sanctioned by the Courts, the assured may recover his deposit for the part of the risque not incurred, and he is bound to surrender the policy accordingly, as the offices are bound to give the full and fair "value of the policy;" but the offices frequently outstep the custom, and allow the policy to proceed without a continuing interest; and a *bonâ fide* assignment of the policy, with *notice* to the office, (notice for the purpose of establishing privity of contract between the assurer and the assured,) does in effect contravene the letter of the law, though it coincides with its policy or spirit, that is to say, it keeps within the limits of a fair wager, and of a wager as an excepted case, precluding the wholesale admission of gambling or wagering. If there were no middle point between gambling and indemnity, the strict interpretation of the law, confining assurance to cases of "interest," were far better than the other extreme; the objects of securing reversionary benefits being either of a domestic character, or attainable by investments in the trader's particular "plant," which requires repairs or renewal, and looks for that purpose to a reversionary fund.

It can scarcely be contemplated, in a review of British interests, that such reversionary supplies are on any wholesale scale sought to be fraudulently forestalled by the mean of insuring ships and warehouses against the respective prevailing perils to which they are subject, or that the case of *Thurtell* v.

Beaumont,* will be followed up by similar exposures to any alarming extent: it were well if on such occasions, however, as the Liverpool fires of 1842, an enquiry into the cause had been followed by a report tending to satisfy the public that the boon of insurance is received by the great commercial public with good faith, and burthened with no risks not strictly its own. Let new offices, with their loose announcements, look to some cases in the reports hereafter alluded to, and weigh this warning, while they consider the meaning of the enactment. If this do not comprehend (in disallowing) all wagers, still let great "interests," based on broad investments, repose under that legal protection of their funds. I have travelled beyond the Court of Westminster and the City of London, since this work first issued from the press; I have visited communities where loose systems of credit brought round a "crisis" oftener than it occurs with us, and in denouncing a "wagering" interest among our wholesale traders, I offer advice to those whose character has already suffered abroad by an overstrained competition in a restricted market, instead of a vigorous extension of the market for British supply: and looking to the particular subject before me, I declare, that if family reversions are, or shall be at any period amply provided for by legitimate assurance, it will be wise to give this fund or "interest" no undue extension, nor to petition the legislature for a right of wholesale wagering, on the ground of having unemployed capital. The actuary and the public *statist*, are bound to know, or qualified to give data for the limit of savings or investments, in any particular direction, and they ought to have a favourable hearing. As to the profitable diversion of surplus means, an authority is to be sought nearer the "Royal Exchange," and the public should be better acquainted with the worthy representatives of Sir Thomas Gresham and his school or institutions (*Committee of Lloyd's*), who seem bound to extend their usefulness toward the community, by circulars, when the balance of speculation, as at the present time, preponderates towards indiscriminate

* 8 Moore 612, 1 Bing. 339.

unmitigated gambling, with a blind dependence on contingencies, not reduced to a scale of probabilities, and threatening disturbance or temporary ruin, where the period of recovery may be deferred by political or other circumstances, perhaps longer than we contemplate, or than rival communities of active interests and stirring industry will allow, to turn to our ultimate advantage.

This Preface may perhaps not reach those who ought to be warned, but I have the authority of Dr. Price, the Baron Masseres, and other heads of this branch of learning, to follow the direction of my subject occasionally into matters of public policy. This not being admissible in the body of the treatise, is here made to precede it. The work itself is merely a compendium of cases, brought down in this edition from the date of the last, the index being rendered more copious; but little has been added to elucidate the principles or cases beyond those contained in the former edition, which have been rather curtailed on review. The excellent treatises of Judges Park and Marshall, should be studied in their entirety, and the decisions of Lord Mansfield applied to: it would be corrupting their learning at its source, to abridge it or paraphrase it here, though portions are occasionally quoted to illustrate the principles here brought together. Almost every case of Fire or Life Assurance will be studied with advantage in connexion with Marine Assurance, and doing so, I rest assured that the reader will find the subject generally squared within the sections and "parts" of this Treatise. Should the matter of Assurance maintain its legalized base, unshaken by a flood of exceptions, I may endeavour, in a future edition, to make this treatise a fuller exposition of this branch of the law.

Twickenham,
April, 1846.

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THE LAW

OF

Fire and Life Insurance.

PART I.

CHAPTER I.

INSURANCE is a contract providing, in case of the loss or damage of property by accidents of a particular description, the payment of a sum of money not exceeding its value, or in case of the lapse of a life it provides a reversion to vest in the representatives of the deceased, or creditors privy to the contract.

The consideration paid for this indemnity is called the "*Premium.*" The person indemnified is called the "*Insured*" or "*Assured.*" The person indemnifying is called the "*Insurer*" or "*Assurer.*" The instrument of Insurance is called a "*Policy.*" See *Good* v. *Elliot*, 3 T. R. 693, but *quære* the derivation there given (*a*).

(*a*) Besides fire and life insurance, and that on which these are grafted, viz. marine insurance, there is a species of insurance on land carriage, where carriers give public notice that they will not be liable for loss or damage of goods exceeding a certain value, unless the goods are described to them when put into their hands as being above that value, and paid for, according to a certain scale of prices, over and above the ordinary rates of carriage. It was insisted in a case before Lord Ellenborough that these limitations of the carrier's responsibility were against common law, but the Court decided the contrary; this judgment contains the following remark: "Considering the length of time during which, and the extent and universality in which, the practice of making such special acceptances of goods for carriage by land and water has now prevailed in this kingdom, under the observation and with the allowance of courts of justice, and with the sanction also and countenance of the Legislature itself (which is known to have rejected a bill brought in for the purpose of narrowing the carrier's responsibility in certain cases, on the ground of such a measure having been unnecessary, inasmuch as the carriers were deemed fully competent to limit their own responsibility); considering also that there is no case in the books in which the right of a carrier thus to limit his responsibility has ever been by express decision denied, we cannot do otherwise than sustain such right in the present instance," &c. *Nicholson* v. *Willan*, 5 East, 507. And see *Lyon* v. *Mills*, 5 East, 423. The earlier cases are *Tyle* v. *Morrice*, Carth. 485; *Titchborne* v. *White*, Str. 145; see *Clay* v. *Willan*, 1 H. Bl. 298; *Clarke* v.

THE PROPERTY.—If the agreement do not concern property directly, it is not a case of insurance, but of wager. Wagers are permitted by the common law, but various prohibitions are imposed on them by statute; wagering insurance is prohibited by the statute quoted presently. All wagers in the form of, and having the general scope of, insurance, are wagering insurances, provided that the event in which the sum is made payable be other than the loss of the property of the insured; and as they pretend to be insurances in form, or being insurances, have other object than the property of the assured, they cannot be set up as wagers allowed at common law, but are made void by the statute. See cases of wager in the form of a policy or wager, open to a plurality (*a*).

Wagers on events which may indirectly concern property are not insurances on property. A wager on the event of war or peace (events which materially affect the value and stability of property) is not a valid insurance (*b*).

2. It is not necessary that the property to which the loss insured against is to accrue should exist in specie at the time the insurance commences. A claim against an infant debtor, may be the subject of insurance on the life of this debtor, though the debt which is the subject of the insurance has not a legal existence until the infant attain his full age.

Standing and growing crops are usual subjects of fire insurance, though if a loss accrue it generally happens to this part of the farming stock after it is gathered in, and such loss is then considered within the scope of the original contract.

3. The goods or property of an enemy, or situate in an enemy's country, cannot be the subject of insurance; nor can there be insurance on the life of an enemy, though he be

Gray, 6 East, 564; *Covington* v. *Willan*, Gow's N. P. C. 115. Also *Piggott* v. *Dunn*, cited in *Yate* v. *Willan*, 2 East, 134. Also 2 Maul. & S. 172.

There is also insurance against damage by hail-storms. A decision of the Court Royal of Rouen of this date, *February*, 1846, has brought the case of devastation by the tornado of last year, in that neighbourhood, accompanied with lightning, within the scope of fire insurances effected on the property destroyed.

Practitioners of conveyancing under the Scotch law receive half per cent. on the property for which the securities are made, and they are responsible for the amount if the securities prove deficient or invalid. Thus they are a species of insurers.

Endowments for children are contracts for securing to them a sum when they attain their age of 21, being a provision to supply the loss of maintenance to which they were entitled from their parents during their minority. This is evidently an agreement to pay a sum in the event of the loss of income upon a certain contingency, and is by our definition an insurance. Benefit clubs which provide for payment of a sum in case of loss of income by sickness, superannuation, or death, are also in the nature of insurance societies.

(*a*) *Roebuck* v. *Hamerton*, Cowp. 737; *Paterson* v. *Powell*, 9 Bing. 320; and 1 Park Insur. note.

(*b*) *Molleson* v. *Staples*, Sit. af. Mich. 1778. Park Ins. cap. xxii.

debtor on personal security to a British subject (*c*). But if an insurance be determined by the loss happening, and then a war break out, the sum due on the insurance is recoverable after the war (*d*).

4. The property must be of a description usually made the subject of insurance: and must not be within the special exceptions of articles that cannot be insured by the conditions expressed in the policy (*e*).

Insurances on gambling property, as on lotteries, are prohibited by statute (*f*): and re-assurance or assurance against loss by an insurer, as to the sum he has contracted to pay on a policy issued by him is also prohibited (*g*).

5. The property must be properly described. "Coffee-house" is not properly within the expression "Inn (*h*)." "Linen" bought on speculation, but being neither household linen nor stock in trade (the party not dealing in such articles) is not included in "stock in trade, linen, &c." (*i*). "Barn" may mean any farming building (*j*). Goods in chambers or apartments are correctly stated to be in the "dwelling-house" of the assured owning the goods (*k*). Profits of a business may be insured as *profits*, but a suspension of business by rebuilding the premises is not a loss covered by an insurance of "stock interests, and on his interests in the Ship Inn" (*l*). "Farming Stock" does not include *growing crops* (*m*). If property be grossly over-valued it will invalidate the policy (*n*). If the description be not certain there can be no contract: but here there is a legislative provision, which it may be as well to set forth in this place. The stat. 9 Geo. IV. c. 13, (which has in view the collection of the revenue by policy duties, does in its effect prevent many questions arising on the construction of

(*c*) 8 T. R. 548, 561; *Flendt* v. *Waters*, 15 East, 260: *Harman* v. *Kingston*, 3 Camp. 153.

(*d*) 6 Maul. & S. 92. *Contra* Hale, P. C. 1, 95. But see Mag. Charta, c. 30.

(*e*) Gunpowder, money, notes, bills, books of accounts, title-deeds, &c.

(*f*) 27 Geo. III. c. 1. And see 9 Anne, c. 6, s. 57.

(*g*) Except in case of death, insolvency, or bankruptcy of the first insurer. Property in ships on the high seas is insured against fire, by the usual shipping policy; therefore it is not usual to insure such property by a separate fire policy. So life policies are not taken out on live stock, they being insurable as goods by fire policies. And fire policies cannot include loss of life of servants by fire: the case would be otherwise on West India estates.

(*h*) *Doe* d. *Pitt* v. *Laing*, 4 Camp. 76.

(*i*) *Watchborne* v. *Langford*, 3 Camp. 422.

(*j*) *Dobson* v. *Sotheby*, 1 Mood. & Malk. 90.

(*k*) *Friedlander* v. "*The London*," 1 M. & R. 171.

(*l*) *Sun Fire Office* v. *Wright*, *in re*, 1 Ad. & Ell. (K. B.) 621; 3 Nev. & M. 819.

(*m*) *Vaisey* v. *Reynolds*, 5 Russ. 19, *S. C.*

(*n*) *Levy* v. *Baillie*, 1 Mo. & P. 208; 7 Bing. 349.

policies as to description of the property,) enacts, that where any insurance from loss by fire shall be made originally, or continued by renewals, on two or more detached buildings, ("detached" meaning, as explained in the statute, any case where a plurality of risks can arise,) or upon goods or stock in such buildings, or in any detached places, (except the implements or stock upon any one farm,) then such separate building, goods or stock, shall be separately valued, and a separate sum insured on each. The penalty is a forfeiture of 100*l.* by the insurer, and the policy shall be void. There is saving of insurance in one gross sum in case the *average clause* be inserted in the policy. The average clause is to the effect, that where an insurance in gross is effected, and a partial loss takes place, then a sum shall be paid which bears the same proportion to the loss as the sum insured bears to the full value of the whole property included in the insurance.

More will be said on the subject of description in a future chapter (*o*).

CHAPTER II.

FORM OF THE POLICY.

THE policy is the agreement of the "underwriters," or subscribed parties: it should mention the name and description of the person insured, the description of property, and then the age, name, and description of the person which is the risk insured, or in fire policies the species of loss intended (for which "loss," "damage," "destruction," "or waste," &c. —"by fire," or any words to the same effect will do); then any special memorandum or conditions, either before the subscription of the insurer's name, or by reference to an indorsement after such subscription: the sum insured (though in marine insurance "open policies," not stating the value, are current) and the amount of premiums and duty must be inserted; also the date. The instrument must be stamped (*p*).

(*o*) It may be here noticed, that by special agreement an insurance may be made to follow the change of property which takes place in farming stock on a farm by the gradual removal and disposal of it in the market. The policy may be for 500*l.* for the first three months, 300*l.* for the next three months, and so on, according as a sale of the stock is expected to proceed. By this means too the Government duty payable will be diminished proportionably to the stock remaining insured.

(*p*) Although a policy of insurance produced at the trial of an action have a sufficient stamp, evidence will be received that it had no such stamp when it

The same rule of construction which applies to all other instruments applies equally to policies of insurance, viz. that they are to be construed according to their sense and meaning as collected from the terms used in them, which terms are to be understood in their plain, ordinary and popular sense, unless by the known use of trade they have acquired a peculiar meaning, or unless the context point out that, to effect the immediate intention of the parties, they must have another special or peculiar meaning (*q*). A policy may be in form of a bond, or of any other form, so that the scope and meaning is an insurance (*r*). But there seem to be some cases in which a wager was decided to be illegal because it had the *form* of a policy of insurance (*s*). This decision was made to bring a case of a wager of immoral tendency or against public policy, within the meaning of an Act (14 Geo. III.) relating to insurance. This decision is therefore not satisfactory proof that any particular form is necessary to a policy of insurance, the wager being void as against public policy.

If the person insured be a party to the insurance as agent for another, this should be set forth (*t*).

The words expressing the obligation may be "insure," "indemnify," "make good loss," or, "pay loss," or any other which signify that a sum is to be paid in case of loss. In life policies the words will be simply "pay" or "cause to be paid."

was effected; in which case it is a mere nullity, though stamped afterwards by order of the Commissioners of Stamps; for it is forbidden by 35 Geo. III. c. 63, s. 14, 16, and not authorized by 37 Geo. III. c. 136, s. 2, which extends only to such instruments as could before be legally stamped after they were executed. *Roderick* v. *Hovill*, 3 Camp. 103.

Where there are distinct interests or shares in goods, and the goods are insured at one entire sum, the stamp for that sum is not sufficient, but must be equal to the aggregate of duties due on the several interests. *Rapp* v. *Allnutt*, 15 East, 601.

Alterations of the policy after execution in immaterial points do not make a new stamp necessary. *Robinson* v. *Touray*, 1 M. & S. 215; *Sawtell* v. *London*, 1 Marsh, 99; *Sanderson* v. *Symons*, 4 J. B. Moore, 42; *Ib.* 5; *Langhorn* v. *Cologan*, 4 Taunt. 329; *Ramstrom* v. *Bell*, 5 M. & S. 267. But indorsements which are the ground of action must be stamped. *Rex* v. *Goulson*, 1 Taunt. 25.

If it is covenanted in a mortgage-deed to insure for seven years, and the premiums paid are to be secured on the mortgage property, this charge is considered as "without limit," and liable to a stamp of 25*l.*, and not to the less stamp due when the charge is limited and certain. *Halse* v. *Peters*, 2 B. & Adol. 807.

Receipts for premium need only a stamp as to the money received for premium, not as to the sum insured, nor as to the duty on the policy. 55 Geo. 3, c. 184, Schedule "Receipt."

(*q*) *Robertson* v. *French*, 4 East, 135, *S. C.*

(*r*) *Kent* v. *Bird*, Cowp. 583; 12 East, 126.

(*s*) *Roebuck* v. *Hamerton*, Cowp. 737.

(*t*) *Meyer* v. *Sharpe*, 5 Taunt. 74, 80; *Ib.* 558; *Davis* v. *Reynolds*, 4 Camp. 726.

The insurers may bind themselves severally or jointly, in their individual capacity, or as officers of a society, or as shareholders of a partnership. In a case which came before the Court of King's Bench, on an issue directed by the Vice-Chancellor (*u*), it was decided that no contract could be enforced by action at common law where the policy ran as follows: "We, the trustees and directors of the said society, whose names are hereunto subscribed, do *order, direct and appoint the directors for the time being* of the said society to raise and pay by and out of the monies, securities and effects of the said contributionship, pursuant and according to certain deeds, &c." Here it will be observed, that the subscribing parties to the policy do not promise to pay, but that their successors shall pay; this, therefore, is a void contract as to the subscribing parties. And on the principle, that if the ancestor is not bound, the heir, though named, is not bound (*x*); and also because the future directors were not parties to the instrument, they are not bound (*y*).

In a subsequent case (*z*), the directors subscribing the policy "declared" that the sum should be paid out of the funds of the society. This was held sufficient to support an action on the *assumpsit*.

By a decision of Lord Ellenborough (*a*), it appears that where by the printed proposals it is set forth that "all insurances by the company are to be by policies signed by three or more of the trustees or acting managers," there nothing can be set up as a policy of insurance which does not answer to this description. So that a public advertisement, setting forth the terms of insurance, could not be considered as a contract between the company so advertising and parties subsequently insured. Yet where there is a policy in existence, and the holder allows his interest to lapse by ceasing to

(*u*) *Alchorne* v. *Saville*, 6 Moore Rep. 202.

(*x*) Finch Law, p. 119. "If a man bind his heir to pay 20*l.* every year, but do not bind himself, he shall not be bound." See *Barber* v. *Box*, 2 Saund. 37. A.—Co. Litt. 384: "I cannot make an express warranty by will, because if I am not bound, my heir cannot be bound by me to warranty nor to pay money." And see Co. Litt. 86.

(*y*) Perhaps in the above case it might have been contended that the word "direct" has a technical meaning, which would give effect to the intention of the instrument. The parties being "directors," do "direct;" that is, do undertake all which by their office they were empowered to do respecting the insurance or payment of money in case of loss: such an implied *assumpsit* seems warranted. But if there be no ground of action in the policy against the subscribing directors, then perhaps the *assumpsit* would lie against the succeeding directors who accepted the premiums in succeeding years, as each renewal of the policy might for this purpose be considered a separate *assumpsit*.

(*z*) *Andrews* v. *Ellison*, 6 Moore, 199.

(*a*) *Salvin* v. *Jones*, 6 East, 571.

pay the premiums which a third party continues to pay, this may create a privity of contract between such party and the assurer, and the renewal receipt referring to the original policy may explain the basis of the new arrangement where this new holder has the necessary legal interest in the life assured; or where the policy was on his own life originally for the benefit of a creditor since satisfied, or *vice versâ* where the creditor takes up a lapsed policy on the life of his debtor (*a*).

In the case of the yearly renewal of a policy of insurance against fire, a receipt for the year's premium, referring by a number or cypher to the original "policy," or contract and description, is sufficient evidence of the renewed agreement. It may be proper to observe under this head, that in case of a lost policy where the Court has directed payment on an indemnity being given by the assured, that interest does not accrue but from the time when such order was made and indemnity given (*b*).

CHAPTER III.

THE DURATION OF THE POLICY.

In marine insurance there are many occasions on which it is important to determine whether the policy make one entire risk or several risks, determinable at several points in the voyage; so in those branches of insurance which are the subject of this work, many important conclusions depend on the solution of the question, whether the risk be one and entire during the period mentioned in the policy, or separable into yearly renewable insurances? Some have supposed, that under a life policy the risk is entire, and cannot be separated into yearly periods for the benefit of the insured; and that under a fire policy the insurance annually recommences and is renewed, and that these yearly renewals cannot be considered as forming together one original entire insurance. As to the facts, (on which our opinion is to rest,) they are these: in a policy of fire insurance it is generally declared, that if the premiums are paid yearly, (or within 15 days after the close of the year,) and if the directors accept the same, the money named in the policy shall be paid to the party insured whenever a loss occur.

It was decided in a case upon this practice of allowing

(*a*) See *Holland* v. *Smith*, 6 Esp. 11.
(*b*) *Bushman* v. *Morgan*, 5 Sim. (Ch.) 635.

fifteen days beyond the expiration of the period of insurance, that if a loss happened within the fifteen days, the premium being then unpaid, but tendered afterwards before the fifteen days expired, the insurance was at an end (*c*), but this case is not now relied upon (*d*). In a subsequent case, which was tried before Lord Ellenborough, it was decided (*e*), that where the rate of premium was altered by the insurers, and notice thereof given to the insured, and refusal on their part to pay the increased premium, then a loss having happened within the fifteen days, and tender of the increased premium having been made after the loss and within the fifteen days, that the insurers were not bound then to accept the premium, and that by the former refusal and actual non-payment of the premium at the time of the loss, the insurance was determined, and no sum recoverable for the loss. But in case there be no notice to determine the policy or to increase the premium, then the insurance is considered as continuing from year to year.

Life policies are limited by the words of the contract to a period of years, or to a life or joint lives, or the longest of two or more lives. Yet a question might arise, in case a year of general sickness should occur, whether the insurers have the power to consider the contract as renewed from year to year, and whether, therefore, they are at liberty to determine the contract with any year (making compensation), or to increase the premium payable at the expiration of the current year, as is done in fire insurance.

Life policies are granted for any uncertain periods which can be reduced to a value by the calculation of probabilities, proceeding on sufficient data (*f*). The premiums are generally payable yearly on a determinate scale, subject to periodical adjustment by a "bonus" or share of profits, sometimes as a set-off to premiums due, or to become due and reduced in proportion to the bonus, or discontinued altogether as wholly covered by the declared bonus. The policy is subject to surrender at the will of the assured, or on the cesser of his interest, whereupon the risk already incurred by the assurer is calculated, and a reduction made accordingly from the amount of premiums paid up; the remainder is the value of the policy paid to the assured. There appears to be no valid argument

(*c*) *Tarleton and others* v. *Stainforth*, 5 T. R. 695; 1 Bos. & Pull. 483.
(*d*) See p. 16.
(*e*) *Salvin* v. *Jones*, 6 East, 571.
(*f*) There is a case in Chancery where an attempt was made, in a contract for purchase of a reversion, to fix the value of the expectancy of a man of sixty years of age, and a bachelor, dying without lawful issue. The Court determined, of course, that such an event could not be the subject of calculation. *Baker* v. *Bent*, 1 Russ. & M. 224.

against considering this insurance contract, as are renewable from year to year, the risk being originally calculated year by year by the probabilities of life for each successive year, and discount thereon; though for the purpose of making a yearly average, this aggregate of yearly risks is merged. But again the premium paid on that year is not payment for a year's risk, but for a period longer or shorter than a year, according to the ratio it bears to the whole value of the reversion. Thus the acceptance of the premium by the insurer on a policy, discontinued by the holder, who allows a third party to continue the payments, seems to set up a new contract between the third party and the insurers. To make out such a case, it would of course be argued that the necessity of a formal instrument, "the policy," was only necessary in approving the risk when originally offered and accepted; that being done their acceptance of the yearly premiums makes a privity of contract, referring to the original agreement; this view wants authority to support it; the supposition is here made always on the grounds of an "interest" in the life assured, subsisting on the party who seeks the benefit of the assurance. *Holland* v. *Smith* only decides between the equities of successive payees of the premium, it does not fix a privity between a second payee and the assurer.

CHAPTER IV.

INTEREST.

GAMBLING wagers, except in particular cases prohibited by statutes, are allowed by our common law (*g*), in which it differs from that of the Continental States of Europe. And wagering insurances, "interest or no interest," were introduced here about the close of the 17th century. Some cases were decided in Chancery against this practice, the Court declaring that "insurances were made for the benefit of trade, and not that persons unconcerned therein, and without any interest in the property, should profit thereby." A policy of life insurance was decreed to be cancelled for want of interest (*h*) (there were also other circumstances invalidating the transaction). Policies on marine insurances received a similar construction, and were set aside by the same Court (*i*). But

(*g*) *Lucena* v. *Crawford*, 2 New Rep. 269; 3 Taunt. 513; *Good* v. *Elliott*, 3 T. R. 693. See 1 Ry. & Moo. 213; Young, 317.
(*h*) *Wittingham* v. *Thornborough*, 2 Vern. 206; Prec. Cha. 20.
(*i*) *Goddart* v. *Garrett*, 2 Vern. 269; 1 Eq. Ca. Abr. 371; 2 New Rep.

in 1716, the Court decided differently in a case of marine insurance (*k*). That branch of insurance is now regulated by statute 19 Geo. II. c. 37, which declares void all policies effected by parties not having an interest. The statute 14 Geo. III. c. 48, which in its title states as its object life insurance, extends however to other cases generally (*l*): this statute requires the insured should have an interest, reciting, "that the making insurances on lives, or *other events* wherein the insured should have no interest, hath introduced a mischievous kind of gaming;" it then enacts, "that no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever wherein the person for whose use or benefit, or on whose account, such policy or policies shall be made, shall have no interest, or by gaming or wagering; and that every insurance made contrary to the true intent and meaning hereof, shall be null and void."

Sec. 2. "And be it further enacted, that it shall not be lawful to make any policy or policies on the life or lives of any person or persons *without inserting in such policy or policies the person or persons' name or names interested therein*, or for whose use, benefit, or on whose account, such policy is so made or underwrote."

Sec. 3. "*And be it further enacted, that in all cases where the insured hath an interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events.*"

Sec. 4. "Provided always, that nothing herein contained shall extend or be construed to extend to insurances *bonâ fide* made by any person or persons on ships' goods, or merchandize: but every such insurance shall be as valid and effectual in the law as if this Act had not been made" (*m*).

A father has not an insurable interest in his child's life (*n*).

In conformity with this statute, there must be a continuing interest in the party insured, even after the death of the

296. The Court held that the premiums could not be recovered on the setting aside a policy, "interest or no interest." *Lowrie* v. *Boardieu*, 1 Dougl. 468. But see *Mead* v. *Davison*, 4 Nev. & M. (K. B.), 701.

(*k*) 2 Vern. 717.

(*l*) But see *Morgan* v. *Pebrer*, 3 Bing. N. C. 454: and Smith's "Leading Cases." Stock-jobbing is exempted from the statute.

(*m*) A wager (not being an insurance) *without interest*, was declared good, notwithstanding this statute, in *Good* v. *Elliott*, 3 T. R. 693. And see 1 Ry. & Moo. 213.

(*n*) *Halfourd* v. *Kymer*, 10 B. & C. 722; quoting *Innes* v. *Equitable*. Lord Kenyon held a wife to have an interest in the husband's life. At Nisi Prius, Peake, Add. Ca. 70.

person whose life is the risk insured. In the case of *Godsoll* v. *Boldero*, the life (the late minister Pitt) determined, the interest still continuing; the party insured was subsequently paid the debt, which constituted his interest. This debt was paid, not out of the assets of the deceased, but by a grant of Parliament. It was held, that the interest of the creditor had determined upon payment of the debt: his claim against the insurers was decided to be void under the statute (*o*). There was a case in Trinity Term, 1832 (*p*), decided in the King's Bench (upon a rule for a new trial, which was refused), where the insurers recovered back the sum paid to the assigns of the person insured. In this case the person insured, or whose name appeared on the policy as the party taking out the insurance, and whose life was the risk insured, was not the party who really took the benefit of the policy, or had the disposal of the same. The assignment of the policy was made, indeed, upon notice to the Insurance-office, given in the name of the person insured, but the consideration for the assignment was received by a stranger, viz. it was the release of a debt due by another party to the person to whom the assignment was made. Thus the person making the assignment, that is to say, benefiting from the assignment, had no interest in the life. This case cannot be adduced as a decision directly in point as to a policy being void for want of interest, since there were other circumstances of fraud in the transaction (*q*). But it may be inferred from this case, that money could be recovered back by the insurers if paid by mistake, as well in cases of failure of interest as in other events.

But, since *Godsoll* v. *Boldero*, there is an understanding between the insurance offices and the public, that policies will be considered valid notwithstanding a discontinuance of "interest." (*Barber* v. *Morris*, 2 Moo. & Malk. 62).

Where the interest ceases in part, the policy is good at law for the remainder (*r*), but it would be safer in every instance of the discontinuance of interest, that the assured should give notice to the office, and thereby create a privity of contract on the altered basis. The strictly legal course would be, however, a surrender of the policy. The case of *Cook* v. *Black* (*s*) limits the claim of an assignee, under the conditions relating

(*o*) 9 East, 72; or rather under the Common Law view of insurance as an indemnity. Smith's "Leading Cases."

(*p*) *Lefevre* v. *Boyde.*

(*q*) The verdict given on the trial admitted, 1st, That the assignee did not participate in any fraud in the taking out the original insurance: 2nd, That the assignment to him was not *bonâ fide.*

(*r*) *Irving* v. *Richardson*, 1 M. & Rob. 153, a case of marine insurance.

(*s*) V. C. Wigram, Feb. 10, 1842.

to suicide, and claim made by the assignee, to his actual debt secured by the assignment of the policy (*t*). A Court of Equity will not relieve by ordering a policy to be delivered up for want of insurable interest (*u*). Where one party insures his own life for the benefit of another, and there is collusion for purposes of fraud, this beginning of the contract will affect the whole proceedings with fraud (*x*).

With regard to fire insurance there are two early cases prior to the statute 14 Geo. III. c. 48, where claims under policies taken out for a term unexpired at the time of the loss were decided to be bad, in consequence of the interest of the insured in the premises having ceased prior to the assignment of the policy to the party claiming indemnity. The first of these two cases is *Lynch and others* v. *Dalzell and others* (*y*). The insured party, proprietor of house and goods, which were the subject matter of the insurance, agreed to sell the same; this property was destroyed by fire in the interval between this agreement and the execution of the assignment; but further, there was no agreement respecting any transfer of the policy until after the execution of the assignment of the house and goods. In this state of circumstances the assignor had no "interest" at the time when the loss happened, he having contracted to sell, which took the property out of him in equity (and the cause was decided in a Court of Equity); but if there were not a failure of interest then, the case of want of interest certainly arose at the time of the assignment of the policy, for that was made after the assignment of the house and goods was executed, and an assignment of the policy was not made in pursuance of any contract entered into before the transfer of the property in the house and goods. The last case was decided in 1721, before Lord King, and his decree was affirmed on appeal to the House of Lords. In the year 1734, Lord Hardwicke followed up that decision in the case of *The Sadlers' Company* v. *Badcock and others* (*z*). The plaintiffs were ground landlords, to whom the house insured in this case fell in on the expiration of the lease within the term for which the lessee had taken out the policy. Anne Strode, this lessee, had taken out the policy for a term of seven years, her lease being then to expire in six years and a half. After the expiration of this lease, within the remaining months of the term for which the policy was taken out, a

(*t*) V. C. Wigram, Feb. 10, 1842.
(*u*) *Desborough* v. *Curlewis*, 3 Younge & C. (Ex. Eq.) 175; and see 3 Myl. & K. 97.
(*x*) *Wainwright* v. *Bland*, 1 M. & W. 32.
(*y*) 3 Bro. P. C. 497.
(*z*) 2 Atk. 554. See also *Anderson* v. *Eddie*, Trin. T. 1795; Park, 575.

fire happened, which destroyed the house; in this interval, a month after the loss, the policy was assigned by Anne Strode, to the plaintiffs. The bill was dismissed, as within the principle of *Lynch* v. *Dalzell.*

As to the *quantity of interest,* in the words of Mr. Justice Lawrence (*a*), "Insurance, being a contract of indemnity, cannot be said to be extended beyond what the design of such a species of contract will embrace; if it be applied to protect men from those losses and disadvantages which, but for the perils insured against, the insured would not suffer." The learned judge then proceeds to class the "insurable interests" as "things immediately subjected to the perils insured against," and "advantages to arise from the arrival of those things at their destined port." In a case before Lord Mansfield (*b*), a contractor for supplying certain public stores set up an insurable interest in a cargo expected in the market, from which he was to be supplied; this was allowed: the expected profits from his bargain with the expected goods, though not consigned expressly to or for him, were considered advantages which certainly would accrue to him, except for intervening perils in the course of the transporting the merchandize. Lord Eldon (*c*) in a dictum on this point (not delivering judgment) wished to narrow the idea of insurable interest to "interest derived out of contracts about property," excluding the expectations of advantage from a particular market without contract.

In the case *Godsoll* v. *Webb* (*d*), a person paying the premiums by consent after the policy had been several years in existence, was ruled to have acquired as assignee an interest, and the whole property, but *Simpson* v. *Walker* (*e*) is an authority limiting the interest of a creditor assuring his debtor's life. This last case is followed out in that of *West* v. *Reed,* V. C. Wigram, February 11, 1843, and *Burridge* v. *Row,* in the Lord Chancellor's Court, March, 1843, limits the interest of any volunteer paying premiums on a policy to the repayment thereof with interest. See the same case, V. C. Knight Bruce, January 18, 26, & May 31, 1842.

Both mortgagor and mortgagee may insure the goods; both debtor and creditor may insure on goods, or on the debtor's life; both trustee and *cestui que trust* may insure the trust

(*a*) *Barclay* v. *Cousins,* 2 East, 546. And see *Lucena* v. *Crawfurd,* 2 New Rep. 314.

(*b*) *Grant* v. *Parkinson,* Park. 402; Marsh Ins. 97, S. C.; 3 Bos. & Pul. 85, S. C.; 6 T. R. 483; 3 Bos. & Pul. 103.

(*c*) Hughes, Ins. 49.

(*d*) 2 Keene, (ch.) 99.

(*e*) 2 Law J. (N. S.) ch. 55.

property (*f*). So both vendor and purchaser have an insurable interest until the contract is completed: a case of common occurrence in marine insurance is insurance by the holder of a bill of lading (*g*).

The grantee of an annuity has only an interest during the continuance of the annuity: if that be paid off during the continuance of the grantor's life, the interest of the grantee must thereupon cease, whether the annuity be paid off by virtue of a clause for repurchase contained in the grant, or without such original provision for determining the annuity.

Where the insurance is by a creditor, the subject must not be a gambling debt (*h*); but it may be a debt to which the debtor may plead his infancy (*i*). When the debt ceases the interest expires (*k*). An agent may insure on his own account if he be paid out of the profits of sale of goods, or by a commission upon such sale; or if he have a lien on the goods for payment of his charges or expenses (*l*). An assignee of a bankrupt has insurable interest in the houses or goods of the bankrupt; though as to life policies, (taken out by the bankrupt), they are not generally kept on foot by the assignees, but are sold. One holding goods on pledge for advances has an interest, and may sue on the policy, taken out for his benefit, in his own name (*m*). A trustee charged with the disposition of an annuity granted to the testator has an insurable interest in the annuitant's life (*n*). The disabilities of a married woman, infant, lunatic, and alien enemy, apply to the contract of insurance. A partner, agent, husband, guardian, committee, &c. may insure *in autre droit*. As to quantity of interest, see further, "Adjustment," cap. VIII.

(*f*) Hughes, Ins. 51. See *Lucena* v. *Crawfurd*, 2 Bos. & Pul. N. R. 295. *Smith* v. *Lascelles*, 2 T. R. 188.

(*g*) 8 T. R. 22, &c.; 1 Bur. 489; 1 Bl. Rep. 103, *S. C.*; *Lucena* v. *Crawfurd*, 2 Bos. & Pul. N. R. 295. See 2 T. R. 188.

(*h*) *Anderson* v. *Edie*, 1795, Park Inst. 640.

(*i*) *Dwyer* v. *Edie*, Park. Inst. 639. Hilary, 1688.

(*k*) *Anderson* v. *Edie*.

(*l*) *Flint* v. *Le Mesurier*, Park. Ins. See New Rep. 313. But not an agent without an interest. *Myer* v. *Sharpe*, 5 Taunt. 74. 80; Ib. 558. *Davis* v. *Reynolds*, 4 Camp. 726.

(*m*) *Sutherland* v. *Pratt*, Exchr. Nov. 7, 1843.

(*n*) *Tidswell* v. *Angerstein*, Peake Rep. 151.

CHAPTER V.

THE PREMIUM AND DATE.

THE consideration is generally made payable by annual instalments. In fire insurance, there is generally reserved, by the terms of the policy, a power for the directors to alter the amount of the premium from year to year. In life insurance, there is also reserved a power of increasing the premium in certain specified cases, but not otherwise: so that except in the specified cases, the yearly premium payable on life policies continue the same for every year of the term of insurance (*o*).

It is generally a condition of policies, that the insurance shall not commence before the premium is actually paid. This is waived by their issuing the policy before payment (*p*), but not by their debiting an agent as for the premium received at the date when due, for removal of a policy. The annual premiums must be paid in the succeeding years, on the day of the month on which the policy was executed, or bears date. The phrase "from the day of the date," was held to mean exclusive of the day, and was distinguished from the expression "from the date," (Sir R. Howard's case) (*q*), which was ruled to include the day. This distinction is justly expunged by the decision of Lord Mansfield (*Pugh* v. *Duke of Leeds*) (*r*). Sir R. Howard's case was a life insurance, under a policy dated 3d Sept. 1697. Sir R. Howard died on

(*o*) The calculation of the risk in life insurance proceeds, first, upon the value of the risk in any particular year; and, secondly, on the chance of the risk having determined by the death of the party in one of the preceding years of the term of insurance. In fire policies this second element of the calculation is omitted; so that here each year has its separate independent risk, and consequently each year may be considered to commence an independent contract: whereas in life policies, on the contrary, the mode of calculation gives the ground of a contract for the whole term of the insurance as one integral risk, which being valued, that value is subsequently, for some collateral purposes, divided into annual instalments.

In Chapter III. is a *quære* whether there should be a discretion in the insurers to increase the premium in cases other than those provided in the policy.

(*p*) *Newcastle Fire Office* v. *M'Morran*, 3 Dow, 255.

(*q*) 2 Salk. 625. 1 Ld. Raym. 480.

(*r*) Cowp. 714.

that day the following year, at one o'clock in the morning. At the present day, the phrase is generally completed by "first and last days included." The further period of fifteen days after the year has expired for renewal, is generally allowed by an express clause in the policy. There is a case where a loss happened within the *fifteen days*, and the contract was under a renewable policy; the premium not being tendered till after the loss, the claim was set aside by the Court (*s*). But this decision is not relied on in practice, and has never since been acted upon, several of the offices having immediately given public notice, that they would hold themselves liable for losses which happen during the fifteen days, before payment of the premium for the ensuing year. In a case of life insurance, the tender of payment by the executors of the insured, who had died during the fifteen days, was not sufficient to support a claim under a policy on the life of the testator; where there was a condition, that if any member neglected to pay up the premiums (reserved quarterly) for fifteen days after they were due, the policy should be void, unless the member, continuing in as good health as when the policy expired, should pay up the arrears within six months, and five shillings per month extra. (*Want* v. *Blunt*) (*t*). Where the fifteen days are allowed, it is in case the insurance is renewable from year to year, not where the insurance is taken out for a special term of months or years, 2 Marsh. Ins., 3 Ed. 800. In a case where an insurance-office had repeatedly given notice, that all persons insured there by policies for a year or years, should be considered as insured for fifteen days beyond the year, a particular party had had notice to pay an increased premium, otherwise the office would not continue the insurance. A loss happened within the fifteen days after the year, the insured then tendered the increased premium; but he had, previously to the loss, in reply to the notice, refused to pay the increased premium. The Court held the contract at an end when the year expired, the party having refused the terms of renewing the policy. *Salvin* v. *Jones and others* (*u*).

The objection for want of payment within due time, may have become waived by some act of the insurers: see *Norton* v. *Wood* (*x*), where payment (of interest upon a bond) after the day, was ruled not to be defeasance of a condition to pay

(*s*) *Tarleton* v. *Stainforth*, 3 Anst. 707; 5 T. R. 695; affirmed in Exchcq. Ch., 1 Bos. & Pul. 472.
(*t*) 12 East, 183. See 3 Camp. 137; 5 T. R. 695.
(*u*) 6 East, 571.
(*x*) 1 Russ. & Myl. 178. See *Newcastle Fire Office* v. *M'Morran*, *supra*.

at the day, the payments having been accepted without objection. As to who is an agent authorized to give receipts on the part of an office for premiums on taking out or renewing insurance, this must depend on the rules applicable generally to cases of principal and agent. An agent cannot by receipt set up a lapsed policy: though the company have entered the renewal or premium, as received, in error (*y*). Where an insufficient premium has been paid by reason of a misrepresentation of the nature or class of the risk insured, the tender of the premium adequate to the true risk will not set up the contract, which was void for want of consideration. (See Chap. VII.)

Return of the Premium takes place in whole or in part. In whole when the risk has never been incurred by the insurer, the contract being void in its commencement; in part where the contract is determined during the period for which it was originally made.

As to the former, the doctrine is thus laid down by Lord Mansfield (*z*), "Where the risk has never been run, though by the fault or negligence of the very party insured, yet the premium must be returned." This was a case of marine insurance; but the principle is general, and is founded on the usage of merchants, as was admitted by the Court in this instance. There is, however, generally contained in modern policies of fire and life insurance a clause to the effect, that the premium shall not be recovered back for any error which may make void the policy.

Where there is fraud on the part of the insured he cannot recover back the premiums upon the avoiding of the contract, for his fraud (*a*); though the fraud were only on the part of the agent, and not of the principal party insured (*b*).

A very important decision on these points will be found (*c*). This was an action brought by the Provident Life Office, against the Hope Insurance Office, to recover back the premiums paid on a policy, taken out in June 1827, in the latter office, by the plaintiffs, on the life of Mr. Stevenson, for the sum of 5,000*l.*, on which policy four annual premiums

(*y*) *Ally* v. *Fernie*, 7 Mees. & W. (Ex.) 151.

(*z*) *Stevenson* v. *Snow*, 3 Burr. 1237; 1 Bl. R. 318; Park Ins. c. xix.

(*a*) 4 T. R. 564, n.; Douglas, 451; 4 Taunt. 470; 5 Taunt. 153; 6 Taunt. 695; 1 Marsh Rep. 556; and 6 East, 316. 320.

(*b*) *Chapman* v. *Fraser*, B. R. Trin. T. 33 Geo. III.; Park Ins. 329; overruling *Whittingham* v. *Thornborough*, Prec. Cha. p. 20; 2 Vern. 206; and *Wilson* v. *Duckett*, 3 Burr. 1361. See also *Da Costa* v. *Scanderet*, 2 P. Wms. 170. See also *Tyler* v. *Horne*, Park Ins. 329, decided in Sitt. after Hil. T. 1785.

(*c*) *Duckett* v. *Williams*, Sitt. after Mich. T. 1832. Exchequ. before Lord Lyndhurst. But see the case on rule for New Trial, 2 Cr. & M. (Ex.) 348.

had been paid when the life ceased in the fourth year. The plaintiffs had effected this and other insurances on the occasion of an advance of 12,000*l.*, made by them to Mr. Stevenson, to be secured by an annuity for his life. The policy contained the following proviso: "Provided, that if any untrue or fraudulent allegation be contained in the declaration, deposited with the [*Hope Insurance Company*], by [*the insured*], this policy shall be void, and all money paid under the same shall be forfeited." The declaration here referred to consisted of answers by the insured, to written interrogatories, made at the time of taking out the policy, of which the substance was, that Mr. Stevenson was then in good health, and that he had never been affected with "gout, fits, palsy, dropsy, affection of the lungs or other viscera, or with any disease tending to shorten life;" and at the foot of the declaration, it was provided, that "if there be any untrue averment, or if any material fact be untruly stated, all money should be forfeited, and the policy void." In an action to recover the sum insured, the Hope Office had set up a defence on two points, firstly, that at the time of the policy being taken out Mr. Stevenson was affected with a disease tending to shorten life: secondly, that the insured had concealed some material facts. The declaration in this action had contained, as is usual, first, special counts for the sum insured; secondly, the common money counts. The verdict was for the defendants: it was made on the special counts; the jury were discharged on the money counts. This verdict was made at a trial in the Court of Exchequer, before Chief Baron Lyndhurst, at the Sittings after Michaelmas Term 1831. At the present trial, the evidence on the former trial was read, by consent, from the short-hand writer's notes, and other witnesses were called by the plaintiffs: the defendants did not produce any witnesses on this trial. The direction of the learned Judge to the jury, after stating the case, proceeded as follows: "You are entitled, and, I think, are bound, in considering your verdict, to consider the verdict made at the former trial, (but that not to conclude you,) in case, after the testimony of witnesses on both sides given at that trial, and which has been read to you to-day, you shall be of opinion that that verdict was made on the question, "was there any disease tending to shorten life?" If you think this alone was in effect tried on that occasion, then, when you consider that verdict, and the opportunities which that jury had, their verdict ought to have great weight with you now. If you are satisfied that this was one of the questions then tried, and the question on which their verdict

was given, you must show great attention to that verdict, though it is very difficult for you to form an opinion as to whether that question were the subject of their verdict. [The learned Judge then commented upon the evidence read, and on the new witnesses examined at the present trial, and proceeded:] "You have therefore to find, *whether Mr. Stevenson had, at the time of the policy being taken out, any disease tending to shorten life?*" If you find that he had, then there will be for you this other question, "*Whether the Provident Life Office did know that fact?*" Mr. Stevenson may have known it; but there may not have been any thing to lead to the conclusion that the Provident Life Office did know it at that time. Therefore, if you are satisfied that, in June 1827, Mr. Stevenson had any disease tending to shorten life, then, (for the purpose of forming your opinion, connecting with the former verdict the evidence read to you, and the new evidence produced to-day,) if you are so satisfied, you will next find, whether the Provident Life Office, or their *immediate agents*, knew of circumstances showing that, on the 16th June 1827, he was not in condition to have a policy effected on his life. The jury returned their verdict, "Mr. Stevenson had no disease tending to shorten life at the time of effecting the insurance." A verdict for the amount of the premiums paid, 562*l.*, was taken accordingly for the plaintiffs.

From this verdict it appeared, that the person whose life is insured is not (for the purpose of affecting them with fraud) an agent for the insured; the misrepresentation to affect them with fraud must be made by the insured, or "their immediate agents," as directed by the Court on this occasion. It was contended in the above case, by the counsel for the defendants, that the proviso, "if there be any *untrue* averment, all money paid under the policy shall be forfeited," was intended to create a forfeiture in case the life should prove uninsurable. The argument was, that when the insurers are put to the expense of defending an action, and they succeed in proving the life to have been uninsurable, their expenses (the extra costs) should be thrown upon the other party, and that it was intended to provide for this remedy accordingly by the clause of forfeiture if any untrue averment. But this was overruled by the verdict. The above decision was set aside by the judgment delivered by Lord Lyndhurst, in November, 1833, on a rule to enter a nonsuit argued in June the same year. The judgment went upon the distinction, that a statement may be untrue, the party making it being ignorant of its untruth, and that such ignorance is not material. See also *Goddart* v. *Garret*, cited p. 9, note.

Where the fraud is on the part of the insurers, who privately know circumstances which render the contract a nullity, as where in marine insurance the underwriters know of the arrival in port of the ship which it is proposed to insure, the premium can be recovered from them (*d*).

Where the contract is void for illegality the premium cannot be recovered back, the maxim then prevails, "*in pari delicto potior est conditio defendentis.*" But a distinction has been taken, both as to fraud and illegality, whether the risk have determined, or whether all continue executory, the risk still outstanding, as where the money was not yet paid over by the agent to his principal and in other cases (*e*).

Where the risk is determined by the act of the party, as by suicide in a life policy, or by an act of wilful burning in a fire policy, there can be no return of premium. The authorities cited under a former head are applicable to this case. But the "value of the policy" is given by the practice of most offices: this will average from one-half to one-third of the premiums; some even volunteer a return of the whole amount of the premiums; a *lure* of recent date.

The premium is returned in part, firstly, by the custom of insurers when a surplus of profits upon the insurances that have continued for a certain period of years (as seven years) remains in their hands.

Secondly, the premium is returned in part where the policy, being for a period of years, or for life, is determined within that period. For this purpose, however, there is no apportionment of a year, so that if the contract is rendered void, even though not for fraud or illegality, within a few days after it commenced, that year's premium cannot be recovered, though by the practice of many of the offices a portion of the current year's premium is returned. As to the general principle, however, of a return of premium after part of the risk has run, the contract being determined before the expiration of the full period for which insurance was originally taken out, it has been decided that return shall be made. This is by the custom of merchants. In the case of *Stevenson* v. *Snow* (before cited), which was a case of marine insurance, the principle was broadly admitted by the Court. On the trial a particular proportion of premium to be returned was insisted

(*d*) 3 Burr. 1909.

(*e*) *Howson* v. *Hancock*, 8 T. R. 575 (case of bets on a horse-race). *Browning* v. *Morris*, Cowper, 790 (case of insurance on lotteries). *Lowry* v. *Bourdieu*, Dougl. 467 (case of marine insurance). See also *Routh* v. *Thompson*, 11 East, 42. *M'Culloch* v. *Royal Exchange*, 3 Camp. 406. *Tenant* v. *Elliot*, 1 Bos. & Pul. 3.

upon, for which amount a usage of merchants was given in evidence. On this, Lord Mansfield observed, "I do not go upon the usage, for the usage found is only that, in like cases, it is usual to return part of the premium, without ascertaining what part." On this, Justice Park, in his valuable treatise on Insurance, comments (cap. xix.); "Though the Court rejected the usage for uncertainty, yet they expressly say, that it serves to show what the idea of the mercantile world is on the usage."

With regard to fire insurance, no return of premium comes within the principle. Because the risk is not divisible, the time being one year, or a special period; and one year is not divisible for this purpose, as we have seen before, nor can a special period of months or years be divided, for that would change it into another period than the one specified. With regard to life insurance, the policy, though taken out for life, may still be considered as an insurance from year to year so long as the life shall continue, the premiums being paid annually: this being like the case of a voyage from the port of embarkation to that of its ultimate destination, with intermediate ports between, on arriving at one of which the risk, by some circumstances, becomes determined.

This return of premium is what is called "*the value of the policy.*" When it is brought into the market, this proper meaning of the expression "value of the policy" is a sum to be recovered from the insurers on a contract which is at an end; it cannot, when paid by a stranger to the insured, give to the stranger any claim against the insurers other than for the recovery of the amount so paid by the stranger; nor can it give him any claim against the insured, but only against the insurer: he, by such payment, does not become a creditor of the person insured, and he does by the transaction admit that the policy is determined; but in practice the assignee of a policy is placed on the same footing as the assured, and even he is more favoured, his claim being generally allowed in case of determination of the life by suicide, or duelling, though not on death suffered for felony. When we speak of assignment of policies, these points will be further insisted upon.

When an action is brought to recover back premiums, as on the common *indebitatus assumpsit* for money had and received, it must be brought against the principal to whom the money has been paid over, and not against an agent who received it for such principal (*f*). But if not actually paid over, the agent may be made defendant, though in his ac-

(*f*) *Sadler* v. *Evans*, 4 Burr. 1984. *Greenway* v. *Hurd*, 4 T. R. 553. *Horsfall* v. *Handley*, 2 Moore (C. P.) 5; 8 Taunt. 136.

counts he had debited the principal with the amount received (*g*). And if the principal be an aggregate body, not corporate, nor capable of being sued, then the agent is the proper party (*h*) to be made defendant: so if the agent have got the money into his hands illegally (*i*); so also if the money was not paid to the agent expressly to be paid over to the principal (*k*); so if the plaintiff gave notice to the agent, before the money was paid over, not to pay it over, but to suspend the contract (*l*).

CHAPTER VI.

THE RISK INSURED.

FIRSTLY, as to the perils in *fire insurance*. These are comprised in the expression "losses or damages by fire." Fire must be the immediate agent; this includes lightning, but in the case of live-stock struck by lightning, the mark of fire must appear on the carcase, otherwise it may be a case of death occasioned by the electric shock alone, which is not a loss by fire. Fire produced by the friction of a wheel on its axle, which consumes the wheel, is a loss of the wheel by fire. The burning of a barrel or other vessel containing quick lime, which is accidentally submitted to the action of water, is a loss by fire as to the vessel, but the spoiling of the lime is not such loss. So the spoiling or consuming of any two chemical fluids or bodies by the process of combustion ensuing on their combination, is not a loss by fire as to either of the substances, but as to any third body it is such loss. Similarly, heat or fire produced by vegetable fermentation, as when a hay-rick takes fire by its own heat, is not a loss by fire as to the vegetable collection, but as to adjoining bodies it is (*m*). Another distinction is, that where fire is actually applied from design, as in the culinary and several manufacturing processes, any loss by misdirection of the process is not considered coming within the object of insurance, inasmuch as the application of heat was not by accident, and the consequential

(*g*) *Buller* v *Harrison*, Cowp. 566. *Cox* v. *Prentice*, 5 M. & S. 344.
(*h*) *Miller* v. *Avis*, B. R. Midd. Sit. M. T. 41 Geo. III.
(*i*) *Townson* v. *Wilson*, 1 Camp. N. P. C. 396. *Watkin* v. *Hewlett*, 1 Brod. 1.
(*k*) *Sanders* v. *Davis*, 1 Taunt. 359.
(*l*) *Edwards* v. *Hodding*, 5 Taunt. 815.
(*m*) The whole hay-rick is considered as under fermenting process, from the difficulty of ascertaining which part was so and which part was consumed by heat communicated therefrom.

damage of over-roasting and the like is not separable from the original design of applying the flame for the due process. But clothes hanging to dry, meat under process of curing by the slow action of smoke, if destroyed by the flame from the fire-place, are "losses by fire." So if any part of the building adjacent to the fire-place, as the chimney, the timber-work round the fire-place, and the like, be damaged or destroyed by the fire coming from the grate, these are proper objects for indemnity; but the grate itself, oven, boilers and other culinary apparatus, or any apparatus containing or applied to the fire for conducting manufacturing process, if destroyed or damaged by the fire which they contain, or to which they are applied, give no claim for indemnity.

We have included in the foregoing remarks that an essential circumstance in the loss must be, that it is accidental. Those remarks must be extended in this particular: not only design in the application of the fire producing loss excludes claim to indemnity (*n*), but, if there be *gross neglect* (*o*), this would constitute a just ground for refusal of a claim. This has been so ruled in several cases of marine insurance, and necessarily extends itself to fire insurance, since the contrary rule would make this contract a conspiracy to endanger the safety of the inmates of a building, and that of the neighbouring buildings (*p*).

It is further necessary in this, as in all other cases of insurance, that the subject-matter of the contract should, at the time when the liability of the insurers is incurred, be free from

(*n*) That is to say, the misapplication of heat, in processes of trade, are not the risks contemplated in insurance. It is a general principle of law that a man who is occupied about the goods of another for hire, in the exercise of his trade, is liable for any damage he may do them while under his hand. Work ill done is as if it were wilfully ill done.

(*o*) Or (as it is expressed in some policies) the consequences of any "hazardous operation" must fall upon the party. Insurance is not an indemnity for want of common sense to discern where there is obvious danger of communicating fire by any particular act. It should, however, be observed, that there is, besides "gross neglect," excuse for which implies that it is the act of an idiot, an inferior degree of carelessness, such as one would not admit in the management of his own affairs; there is likewise "slight neglect," that for which only a man of extreme caution would not be excusable. For these two latter species of carelessness, a depositary of goods, who receives them without being paid for his attention, is not liable. To bring a case of insurance within the rule of bailment, the goods insured may be considered, after the loss, as if they were the goods of the insurer, and had been deposited by such owner with the person who is the other party to the policy of insurance: as a depositary of the goods, without wages or hire, he is only liable for the "gross neglect," and not for the two inferior kinds.—(See Sir W. Jones's "Bailment.")

(*p*) *Ripon* v. *Cape*, 1 Camp. 434. It was decided, however, in a case of shipping insurance, that the burning of his ship by the captain to prevent her falling into the enemy's hands was a fair loss by fire. 1 Camp. 123.

the damage insured against; which means, not only that the buildings or goods should not already have caught fire, but that fire should not be raging in an adjacent spot, from which it is probable that it will communicate to the insured. On this ground, a policy was set aside in the case of *Bufer* v. *Turner* (*q*). It is also usual to provide, in some cases in policies on warehouses and storehouses, that "no fire is kept, nor hazardous goods deposited" there; or such general rule is among the rules of the office, printed in their policies or proposals (*r*). The several degrees of hazard, from the nature of the goods or materials, or manner of construction of buildings, are provided for by a corresponding scale of premiums. Some things are uninsurable, as gunpowder. Certain manufactories, from their extent and their hazardous processes conjointly, and books of accounts, bills of exchange or notes, title-deeds, writings, and the like, are uninsurable (*s*), and are excepted accordingly in the conditions of insurance offices. Damage or loss by civil commotions are not subjects of indemnity; nor by invasion or foreign enemies, or by any usurped power (*t*).

Of all these instances we will give cases or authorities where they occur in the books; but of many the exemplifications are only in the records of the insurance companies, not in those of the courts of law. But before turning to such examples, it may be stated, that damage or loss may be considered to ensue immediately from fire where the property is injured from the acts of persons whose judgment or reason is temporarily suspended by the terror of the scene, and the sudden danger; thus fragile articles thrown out of window, the wasting of liquor by the act of a party who leaves the tap of the barrel open, upon the sudden happening of fire by his act; these, and the like, are immediate loss by fire upon the true principles laid down by the courts as to consequential damages (*u*). Also damage or expenses incurred in preventing

(*q*) 2 Marsh R. 46. 6 Taunt. 338.

(*r*) *Dobson* v. *Sotheby*, 1 M. & Mel. 90. This clause was ruled not to extend to the case of a tar-barrel introduced for purposes of repairs.

(*s*) Money, bills, and books of accounts, have other value besides the saleable materials (which classes them as goods): to insure the value of these is not the object of a fire policy, any more than it is to insure the property depending on a life by a fire policy on his body against the event of his death by fire.

(*t*) *Drinkwater* v. *London Insurance Company*, 2 Wils. 363. *Langdale* v. *Mason*, Park, 657; Marsh. Ins. 794.

(*u*) See *Scott* v. *Shepherd*, 2 Bl. R. 392; 3 Wils. 403, S. C. The question was, whether the second throwing a squib, which being lighted and thrown had lodged on defendant's shop or stall, whence he knocked it off, was the cause of the damage which ensued from this new direction given to the squib, or whether the

the spreading of a fire by taking out of the wall an ignited beam, and the like, make a fair claim. This last case is called, in marine insurance, "gross or general average."

As to damage by misapplication of heat in manufacturing process, the case of *Austin and others* v. *Drew* (*x*) may be cited. The policy expressed the indemnity to be "against all the damage the plaintiffs should suffer by fire in their regular built sugar-house;" the register over the fires of the sugar-house, which was usually shut at night to exclude the air, was continued shut on a particular morning when the fires were lighted, in consequence of which the sugar was much injured by the sparks and smoke; this was held not to be a loss within the meaning of the policy. In this case, ignition had not taken place; the damage did not extend beyond the spoiling the article under process of manufacture.

Where goods on board a steam-vessel were spoiled by water escaping from the steam-boiler, this, in a policy of marine insurance, was held not to support a claim (*y*).

As to the hazardous nature of the goods or buildings insured, the description of the articles given in by the party taking out the insurance is material to its validity, so far as the description do or do not lead to the true adaptation of the premium. A coffee-house is not an "Inn" (*z*). Linen-drapery stock, purchased on speculation, is not comprised in an insurance on "stock-in-trade, household furniture, linen, wearing apparel and plate," the insured not being a linen-draper (*a*). The fixtures are included in the term "dwelling-house."

In the case of *Levy* v. *Baillie* (*b*), the policy was declared void for fraudulent misdescription in over-valuing the property insured, and lost by the fire. The Court refused to grant a rule for a new trial. The claim was for 1,085*l.*, a verdict had been obtained for 500*l.* It was attempted to support the rule by a suggestion that goods had been carried away during the fire by the people surrounding the premises: but this was answered, the goods insured were not of a portable nature.

In order to make out a value in the property insured equal

first throwing was the immediate cause, as if the ultimate direction given was without design or decision of the party giving it that motion, but an involuntary act resulting from the instant danger. See also *Leame* v. *Bray*, 3 East, 593; *Rogers* v. *Imbleton*, 2 Bos. & Pul. 117; *Huggett* v. *Montgomery*, 2 N. R. 446.

(*x*) 6 Taunt. 436; 2 Marsh. Rep. 130; 4 Camp. 360.

(*y*) *Scordet* v. *Hall*, 8 Bing. 607.

(*z*) *Doe* v. *Laing*, 4 Camp. 76.

(*a*) *Watchorne* v. *Langford*, 3 Camp. 422.

(*b*) Moore & P. i. 208; 7 Bing. 349. So in marine insurance, a valuation which is excessive, and made with fraudulent design, vitiates a policy. 3 Camp. 319, *Haigh* v. *De la Cour*.

to the amount insured, a depositary of goods for hire may add to the price of the articles the amount of his charges for custody of the articles (*c*).

But if the description be substantially correct, and a more accurate statement would not have varied the premium, the error is not material (*d*).

When an alteration in the property as to its extent or degree of hazard, or its location, takes place, notice must be given to the office.

A warranty that the mills only work by day is not broken by a single case of working by night (*e*).

A single case of drying other materials (gratis) does not vitiate a policy on a granary for "drying corn" (*f*).

In *Pim* v. *Reid* (*g*) *and others*, C. P. May 27, 1843, the introduction of hazardous goods without fraudulent intention, was held not to vitiate the policy, though without notification to the office.

It has been stated that the loss arising by the gross negligence of the insured will not make a case for indemnity from the insurer. But where the negligence is on the part of the servant of the insured the case will be otherwise. For it is held, that the negligence of the servant does not make a damage immediately, but only consequentially, damage caused by the master (*h*).

Negligence of servants causing damage by fire in dwelling-houses is punishable under statute 14 Geo. III. c. 78, s. 84.

An over-valuation of the property insured is a fraud upon the insurers, which will make the contract void (*i*).

Under the Acts 43 Geo. III. c. 58, s. 1, and 7 & 8 Geo. IV. c. 30, s. 2, the wilful burning of property, with intent to defraud, is a capital felony. The intent to defraud is considered sufficiently made out on proof of the act of wilful burning (*k*).

The remedy against the hundred for wilful destruction by fire is confined now to destruction by the act of a *riotous assembly*. See the Act 7 & 8 Geo. IV. c. 31, s. 2. This statute repeals 9 Geo. I. c. 22; stat. 22 Geo. II. c. 56; stat.

(*c*) It must be remembered, as to description of goods, that the Act 9 Geo. IV. c. 13, prohibits including a plurality of risks in one sum. See before, Chap. I. p. 4.

(*d*) 1 R. & M. 92.

(*e*) *Mayall* v. *Melford*, 1 Nev. & P. (K. B.) 732; and see *Whitehead* v. *Price*, 2 C. M. & R. 447.

(*f*) *Shaw* v. *Robberds*, 1 Nev. & P. (K. B.) 279.

(*g*) 6 Sc. N. S. (C. P.) 982.

(*h*) See opinion of Chambre, J. in *Huggett* v. *Montgomery*, 2 N. R. 446.

(*i*) *Haigh* v. *De la Cour*, 3 Camp. 319; see *Levy* v. *Baillie*, *supra*.

(*k*) *Rex* v. *Gilson*, 1 Taunt. 25; *Farrington's case*, Russell, 1674; *Rickman's case*, East's P. C. 1035.

57 Geo. III. c. 19, and stat. 3 Geo. IV. c. 33. The insurers in the name of the insured, or the insured, are entitled to recover from the hundred under this statute, although the latter may have already recovered on a policy of insurance, for it may be presumed in the latter case that the insurer sues as agent or trustee for the insured (*l*).

Life Insurance. Accidents which necessarily terminate life, and terminate it suddenly, form a distinct class of cases from that of accidents which can be counteracted by medical skill; and these latter are separable into such as are only curable by the greatest possible skill and attention, and others which only become dangerous and incurable by the grossest neglect and want of skill.

It may not always be *material* that the insured should mention that an accident has happened, though that in effect shall cause his death. Death may be occasioned by mortification ensuing upon cutting a corn to the quick, but such an effect is not the natural and immediate consequence of cutting a corn, the effect is rather referrible to improper treatment or neglect.

Where death is caused by the act of the party, by suicide or duelling, by commission of an act of felony, and suffering a capital punishment, or in active military service, the case is not covered by the insurance. Intention of committing the act of drowning, by throwing himself into the water from the bank of, or bridge over, the river, cannot be met by a plea of lunacy (*m*).

As to what is an "insurable life," the insurance companies now generally specify certain diseases which they declare shall render the life uninsurable by them, or only insurable at an increased premium. But in an early case, before these express conditions in policies were in use, a party subject to violent fits of the gout was considered a good life for insurance (*n*). So where Sir James Ross, from a wound received in the battle of *La Feldt*, in 1747, was troubled with a disorder attributed by the physicians to a local relaxation or paralysis, his life was considered insurable (*o*). But in a case

(*l*) 3 Dougl. 61; *Mason* v. *Sainsbury*, 2 Marsh. Ins. 796, 3d edit. *Clark* v. *Blything*, 2 B. & C. 254; Smith's Le. Ca. 170.

(*m*) *Borrodaile* v. *Hunter*, 5 Sc. N. S. (C. P.) 418; 5 Ad. & E. (N. S.) Q. B. 639; Tyndal Dissent. *Kinnear* v. *Borrodaile* is a case that turned upon suicide of the insured, but the evidence was unsatisfactory. K. B. July, 1832. In *Cook* v. *Black*, V. C. Feb. 10, 1842, a creditor being assignee of a policy recovered according to his "interest," or debt, the death happening by suicide. As to effect of intemperate habits on the risk, see next Chapter.

(*n*) *Willis* v. *Poole*, Park, 650.

(*o*) *Ross* v. *Bradshaw*, 1 Bla. Rep. 312. And see *Watson* v. *Mainwaring*, 4 Taunt. 726.

where, on a *port mortem* examination, a severe organic disease of long standing was discovered, of which symptoms existed in the occasional derangement of the intellect of the party, these symptoms were considered material proofs against the insurability of the life, and, having been concealed from the insurers, the insured was held not entitled to the benefit of the insurance (*p*). So where there are symptoms of organic disease, which are concealed from the insurers, and the life is terminated shortly after the insurance was effected, but by a new disorder, the life is considered to have been uninsurable, and the policy vitiated (*q*).

In this case of *Landeneau* v. *Desborough*, it was stated, that whether any particular disorder were one tending to shorten life was a question for a jury.

If a wound be mortal, but death do not ensue until the expiration of the policy (in the case of a policy for a term of years), the wound being received during the term when the policy was in existence, a doubt was thrown out by Justice Willes (in a trial on a policy of marine insurance) (*r*) whether this would be a case for indemnity under the policy.

A case of death, as punishment for felony, occurred in a policy on the life of the banker Fauntleroy; the Master of the Rolls decided that a claim would lie, the policy not excepting the case of death by the hands of justice. But this judgment was reversed on appeal to the House of Lords (*s*). Where the insurance is made by another party than the one whose life is insured, or assigned afterwards to a third party, the death happening by the act of the party whose life is insured does not invalidate the policy, according to the practice of most of the offices.

The age, and habits as to temperance, are elements of the risk; as are also residence within certain limits, as to locality and climate. Several of the new offices waive the condition of exact date of birth, and also by an extra premium cover any change of residence; and in some few establishments, such extra premium is taken to cover defects of health (*t*).

These cases will be further gone into in the next chapter.

Sometimes a question arises as to the time *when* death happened; where the party has sailed on a voyage, and the ship is presumed to have been lost, this is a question for a

(*p*) *Landeneau* v. *Desborough*, 3 Carr. & P. 353.

(*q*) *Maynard* v. *Rhode*, 1 Carr. & P. 360. See *post*, *Watson* v. *Bevern*, *Ib.* p. 363; *Morrison* v. *Muspratt*, 3 Bing. 60.

(*r*) *Lackyer* v. *Offley*, 1 T. R. 252; 2 Dow & Clark, 1.

(*s*) 3 Russ. 351; *Bolland* v. *Disney*, 4 Bligh, 194; and see cases cited.

(*t*) See prospectuses of the "Alfred," "Britannia," "Church of England," "Medical and Invalid," "Promoter."

jury. A verdict was returned for the plaintiffs in an action to recover from the insurers the sum insured on the life of *L. Macleane*, Esq., from 30th January, 1777, to 30th January, 1778: the evidence being, that about 28th November, 1777, Macleane sailed from the Cape of Good Hope in the *Swallow* sloop of war. Several captains of vessels, who had sailed the same day, believed that the *Swallow* must have been as forward on the voyage as their ships on the 13th or 14th January, 1778, the period of a violent storm; the *Swallow* was much smaller than their vessels, which with difficulty weathered the storm (*u*).

CHAPTER VII.

MISREPRESENTATION—CONCEALMENT—NON-COMPLIANCE WITH WARRANTIES.

THE general class of circumstances which render a life or property uninsurable, or less than ordinarily insurable, have been given. But in this, as in every other contract, it may be asked, on which of the parties falls the duty of ascertaining the state of the risk? Lord Mansfield, in the case of *Carter* v. *Boehn* (*x*), gave some heads for a rule in this matter. "The insured need not mention what the insurer ought to know; what he takes upon himself the knowledge of, or what he waives being informed of: the insurer need not be told general topics of speculation." This last head of general speculations will comprise the nature of different climates as affecting European constitutions, the healthiness or unhealthiness of different trades, occupations, or courses of living, the hazardous nature (in fire insurances) of different constructions of building, or of their materials, or the uses for which the building is employed, and the like. The insurance companies, however, by experience, now issue "proposals" in most cases interrogating upon certain points affecting the particular class of persons applying to become insured: the answers are then referred to in the Policy.

As to matters within the knowledge of the insured alone, what is a fraudulent concealment or misrepresentation depends simply on whether the matter were "*material*" to the consideration of the risk; this is a matter of fact to be ascer-

(*u*) *Patterson* v. *Black*, 2 Marsh, Insur. 780.
(*x*) 3 Bur. 1905; 1 Bl. Rep. 593.

tained by a jury; "and if material, the consequence is matter of law that the policy is bad (*y*);" and from the case of *Duckett* v. *Williams*, carried into subsequent decisions, the materiality of the fact mis-stated invalidates the contract; the knowledge of the fact by the person taking out the assurance (on another's life) not being material to influence the issue for trial.

The distinction between a misrepresentation and a non-compliance with warranty, as given by the Courts, is quoted in the note below (*z*).

The contract is equally void whether the misrepresentation were made on the part of the insured or of his agent, or of any other party concerned on his behalf about the insurance (*a*). And it makes no difference that the loss depends on other cir-

(*y*) *Rodgson* v. *Richardson*, 1 Bl. Rep. 563.

(*z*) "Insurance is a contract upon speculation. The special facts upon which the risk is to be computed lie most commonly in the knowledge of the insured only. The underwriter trusts to his statement, and proceeds upon confidence that he does not keep back any circumstances within his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement."

"The question therefore must always be, 'Whether there was, under all the circumstances, at the time the policy was underwritten, a fair statement or a concealment; fraudulent, if designed: or, though not designed, varying materially the object of the policy, and changing the risk understood to be run?'" Lord Mansfield in *Carter* v. *Boehn*, 3 Burr. 1905; 1 Bl. Rep. 593.

Again, in *Mayne* v. *Walter*, B. R. East, 22 Geo. III., Lord Mansfield distinguished, "A representation is a state of the case, not part of the written instrument, but collateral to it, and entirely independent of it; and it is sufficient that a representation be substantially performed."

"Even written instructions, if they are not inserted in the policy, are only representations; and in order to make them valid and binding as a warranty, it is absolutely necessary to make them part of the instrument by which the contract of indemnity is effected. If a representation be false in any material point, it will avoid the policy; and if the point be not material, the representation can hardly in any case be fraudulent."

Again, in *Pawson* v. *Watson*, Cowp. 785: "There is no distinction better known to those who are at all conversant in the law of insurance than that which exists between a *warranty* or condition which makes part of a written policy, and a representation of the state of the case. Where it is a part of the written policy it must be performed."

And in Dougl. 247-260: "If he represents facts to the underwriter without knowing the truth, he *takes the risk upon himself* (by so representing)."

And Dougl. 271: "The great question is, whether the representation was false, and that, in a material instance, fraud is found out by the materiality of the point. To make written instructions binding as a warranty, they must be inserted in the policy." Cowp. 790; and see end of Chapter.

(*a*) *Thompson* v. *Buchanan*, 4 Bro. P. C. 483. *Fitzherbert* v. *Mather*, 1 T. R. 12. But see *Duckett* v. *Williams*, *ante*, pp. 18, 19.

cumstances than those which the misrepresentation or concealment concerns: the contract is void (*b*).

It is also held that mis-statements made by parol vitiate the contract, though, by the rules of the office, written averments only are expressed to make it voidable (*c*).

A few cases will illustrate the doctrine of misrepresentation. In *Morrison* v. *Muspratt* (*d*) the policy was set aside because the parties effecting the insurance referred the insurers to a surgeon who was little acquainted with the health of the subject of the insurance, and concealed the fact of another medical attendant having declared that it was not a good life. This part of the evidence not having been put to the jury by the judge, a rule for a new trial was made absolute. In this case was cited, among others, that of *Lynch* v. *Hamilton*, (3 Taunt. 44,) where Lord Mansfield observed, "Without doubt it is an established principle, that the person insuring is bound to communicate every intelligence which can affect the mind of the insurer in either of these two ways; firstly, whether he will insure at all? secondly, at what premium?" In *Huguenin* v. *Ryley* (*e*), the declaration described the insured at *Fisherton Anger*, at a time when she was a prisoner in the county gaol there; it was held to be a question for the jury, whether the imprisonment was a material fact. In the case of *Stockpole* v. *Simeon* (*f*), the assured recovered, the broker employed by him having stated that his employer would not warrant, but that he believed it a good life. There was suspicion, on account of the person having gone to the South of France, and died shortly afterwards. It was suggested on the trial that he went to France to avoid his creditors. But in the case of *Everett* v. *Desborough* (*g*), the policy was declared void: here the party insured had told the office, that he knew nothing of the life, that the office must apply to the person whose life was the subject of the insurance: the office did apply to him accordingly: he concealed material points respecting the state of his health. In *Landeneau* v. *Desborough* (*h*) the subject of the insurance had long been afflicted with catarrhal cough, and with occasional fits of mental aberration: these facts had not been communicated to the insurers: the policy was void. The counsel for the plain-

(*b*) *Seaman* v. *Fonnereau*, 2 Stra. 1181. *Webster* v. *Forster*, 1 Esp. R. 407. *Willis* v. *Glover*, 1 New Rep. 14; Park, Ins. cap. 10.
(*c*) *Wainwright* v. *Bland*, 1 M. & W. (Ex.) 32.
(*d*) 12 Moore, 231; 4 Bing. 60.
(*e*) 6 Taunt. 186.
(*f*) Park, 648.
(*g*) 3 Mo. & P. 190.; 5 Bing. 503, *S. C.*
(*h*) 3 Carr. & P. 353.

tiffs (Brougham) argued, that the question for the jury was, "whether there had been a concealment of any circumstance which the party insured thought material?" But Judges Bayley and Littledale overruled this. In *Maynard* v. *Rhode* (*i*), there was a concealment of organic disorders of long standing, and death ensued within six months after the policy was effected. In the case of *Watson* v. *Mainwaring* (*k*), the cases left for the verdict of the jury were two; first, whether the death had been caused by *organic dyspepsia?* secondly, whether, if it were the common dyspepsia, the disorder had been excessive in degree? The verdict returned was, that it was not organic nor excessive, but the common dyspepsia; the verdict accordingly was for the plaintiff: a motion for rule for new trial was refused. The case thus put to the jury was in consequence of the evidence of medical men stating that the question whether the disease tended to shorten life depended on its quality, (whether it were organic,) or on the degree of the affection, the violent dyspepsia, though of the common kind, and not organic, having a tendency to shorten life. In the case of *Edwards* v. *Barrow* (*l*), the counsel for the plaintiff submitted to a non-suit, letters of the deceased being given in evidence where she had stated, both shortly before and after the policy was executed, that "her health was quite gone, and her constitution undermined," though the medical men, on a *post mortem* examination of the body, had found nothing of disease tending to shorten life; and though they stated that they did not think it material to have been stated to the office that the deceased had had a child, she being a single woman.

As to what is a fair reference to the "usual" medical attendant, see *Huckman* v. *Fernie* (*m*). It seems now admitted as a principle by the Courts, that the misrepresentation of his state of health by the person whose life is the subject of insurance, affects the party taking out the insurance, as if the former were his agent in the transaction. Nothing short of this extreme doctrine can be gathered from the case of *Duckett* v. *Williams*, elsewhere referred to, and the principle of that case seems to have been freely admitted by the Court in that of *Swete* v. *Fairlie* (*n*), though here a suppression of a previous interval of lunacy, and other bad symptoms contemporaneous therewith, were by the verdict

(*i*) 1 Carr. & P. 360.
(*k*) 4 Taunt. 763. See the case of *Duckett* v. *Williams*, before noticed.
(*l*) C. P. April 23, 1830.
(*m*) 3 Mees. & W. (Ex.) 517.
(*n*) K. B. Feb. 28, 1833.

declared not to have been misrepresentations, as the subject of the complaints was not aware of them. *Rawlings* v. *Desbrough* is a similar case, and equal in result of the verdict (*o*). In the case of *Chattock* v. *Shawe*, July 1835, under circumstances of misrepresentation similar in amount, here the plaintiff being a solicitor, who effected an insurance on the misdescribed risk, Colonel Greswold's life: the principle was again resorted to in argument—that the subject of the insurance is an agent for the party taking out the insurance. The case of *Hackman* v. *Fernie* (*p*), leans against the implied agency. *Palmer and another executor of Howes* v. *The Alliance Company* (*q*), under similar circumstances: here the insured lost the verdict; in this case the insurance was taken out and the misrepresentations were made by the insured. *Evans* v. *Cox and others* (*r*), *Lefevre* v. *Boyd* (*s*), *Wainwright* v. *Bland and others* (*t*), are three cases of misrepresentation and fraud, accompanied with appalling circumstances of this species of speculation in the "expectancies" of life; in one of the cases there being a rapid succession of deaths under similar circumstances, covered by insurances taken out by one party. The case of *Geach and another, Assignees of Scott a Bankrupt* v. *Ingall* (Secretary of the "Imperial"), tried before Lord Denman at the Warwickshire Summer Assizes, 1844, upon a case of concealment of spitting of blood, the assured obtained their verdict, but a rule was made absolute for a new trial on May 3, 1845, at the Exchequer, before C. B. Pollock, on the ground that the concealment was material, and for error in the direction of the Judge on the trial, as to whether it were *such* a spitting of blood as would tend to shorten life. *Stackpole* v. *Simon* is a case of misrepresentation rebutted on evidence (*temp. Lord Mansfield*). *Sir W. Forbes* v. *The Edinburgh Assurance Company*, was a case decided in the Jury Court, Edinburgh, 1830 (quoted in "Jones's Annuities"), when the circumstances were concealment of the fact of the "life" insured (Earl of Mar) taking opium, and being generally in a depressed state.

Intemperance is material, and concealment vitiates the policy (*u*). A habit of intemperance is the material fact, though no illness ensue.

(*o*) Q. B. Dec. 1837.
(*p*) 3 M. & W. 505.
(*q*) Tried at Norwich, July 1841.
(*r*) K. B. Feb. 1831.
(*s*) K. B. Dec. 1831.
(*t*) Exchequer, 1835.
(*u*) *Craig* v. *Fenn*, 1 Carr. & M. (N. P.) 43. *Sadler* v. *Dixon*, 5 Mees. & W.

With regard to the rule, that a warranty or condition must be inserted in the policy—a rule which was confirmed by the opinion of all the judges in *Lothian* v. *Henderson*, (Bos. & Pul. 499) (*x*)—the Court would not hear evidence that it was the custom of the insurer to consider a written memorandum, wrapped up in or wafered to a policy, as part of such policy (*y*). But a writing in the margin may be a warranty (*z*). But printed proposals referred to in a policy are part of the policy (*a*). In the case of *De Hahn* v. *Hartley* (*b*), the effect of a warranty, as distinguished from a representation, was further defined by Lord Mansfield: "a representation may be *equitably* and *substantially* answered; but a warranty must be *strictly* complied with." This is at common law; but Courts of Equity will relieve against a condition in insurance as in any other contract. The grounds for such relief are, accident, error, fraud, surprise, operating against the complainant; and in general, where the condition is in the nature of a penalty, and the party insisting upon the penalty can be put in as good condition as was intended by the original contract, the penalty will be set aside; as is always done in the case of mortgage deeds, where, strictly, the estate is forfeited by non-payment of the mortgage money within a year. Sometimes, where the premium is insufficient, by reason of error in statement of the property, the offices pay on the loss such portion as the premium paid bears to the true premium. But such mis-statement, if a material variance, may vitiate the policy (*c*).

In practice, a reference to arbitration is provided for by the policy in case of dispute as to the matters in or concerning the policy, by which equitable relief is generally obtained. As to the force of a condition to refer all matters to arbitration, the discussion is reserved to a future chapter (*d*). Money paid by the assurers may be recovered on discovery of the fraud of the assured (*e*).

There are conditions or warranties which do not go to the defeating the contract as to payment of the loss, but

405, affirmed 8 Mees. & W. (Ex.) 985. *Southcomb* v. *Merriman*, 1 Carr. & M. (N. P.) 286.

(*x*) *Pawson* v. *Watson*, Cowp. 790.

(*y*) *Pawson* v. *Barnevelt*, Dougl. 12, note. *Prize* v. *Fletcher*, Ibid.

(*z*) *Bean* v. *Stupart*, Dougl. 11. *Kenyon* v. *Perthon*, Dougl. 12, note.

(*a*) *Worsley* v. *Wood*, 6 T. R. 710, "in error." *Routledge* v. *Burrel*, 1 H. Bl. 254.

(*b*) 1 T. R. 343.

(*c*) *Levy* v. *Baily*, *ante*, p. 25.

(*d*) Part III.

(*e*) *Lefevre* v. *Boyd*.

which concern collateral matters. It is an usual condition that the premium shall be forfeited in case of fraud or misrepresentation. A distinction has been taken as to return of premium generally, whether the contract is determined by the loss having happened, or whether it is undetermined or "executory" (*f*). Where the nature of the risk has been mis-stated, the assured may, on discovering his error, recover back the premium, or in case the insurers refuse, the contract will proceed. Where the contract is "executed," the Courts of Common Law will not (*Duckett* v. *Williams*), but Equity will, relieve in a clear case of mistake or surprise.

Where it is a condition of the policy that the churchwardens shall certify as to the cause of the loss, this must be strictly complied with (*g*).

Where the same property is insured with several insurers, and one is sued for the whole loss, the insurer can recover a contribution from the others (*h*). It is generally a condition of the policy that the insured shall give notice of any other insurance on the same property.

CHAPTER VIII.

ADJUSTMENT, CLAIMS.

In life insurance the loss must always be a total loss. In fire insurance there are partial losses and total losses. It is not the custom in fire insurance to except any class of articles from the benefit of indemnity for partial loss which would be proper subjects for indemnity from total loss; though in marine insurance there is such a custom, whereby frivolous claims and complicated adjustments for breakage and spoiling of certain goods is avoided. In marine insurance, on such articles as fruit and fish, there is usually a condition that there shall be no claim unless the loss is total, which means, in this case, that the things have ceased to exist *in specie*; or that there shall be no claim unless the loss reach 20, 30, or some other specified amount per cent. In fire insurance the policy usually (*i*) contains a clause that the insurers shall have

(*f*) Park, Ins.

(*g*) *Wood* v. *Worsley*, 2 H. Bl. 574. *Oldham* v. *Bewicke*, Ib. 77, n. *Routledge* v. *Burrell*, 1 H. Bl. 284.

(*h*) *Newby* v. *Reed*, 1 Bin. 416. *Mayne* v. *Davis*, Park, Ins.

(*i*) Park, Ins. cap. vi. viii.; 2 Burr. 1909.

the option of paying the claim or of restoring the goods that have been damaged or destroyed; this custom relieves the law of a distinction which prevails in marine insurance, *viz.* that in total losses (that is, where the voyage is not worth pursuing and the like) (*i*), the insured may *abandon* the goods, and shall be paid the whole sum insured, the insurers receiving the goods saved; and, on the other hand, where the loss is partial, and where all the loss and expenses do not reach one half the value of the cargo, the insurers shall be allowed to reinstate the exact damage incurred, leaving the goods in the possession of the insured. The subject, therefore, to be considered here, is, the mode of adjustment of losses without distinction as to their being total or partial, leaving any remarks that may be due to the distinction of total and partial loss to the end of this chapter.

The mode of adjustment of losses depends, for the most part, upon certain general rules of insurance law adopted by the courts of this country, applicable equally to losses by fire or by marine perils. The decisions upon these general rules in our courts happen to have been given generally in cases of marine insurance.

First Rule. If an adjustment of a loss at a certain amount be agreed to by the insurers, or if the insurers agree to pay the whole amount insured, they are not absolutely bound by their agreement, but may make any defence in resistance of payment "which the facts or the law of the case will furnish" (*k*).

Second Rule. If payment of the loss have been made by the insurers, not in pursuance of any written adjustment as to the amount, or if it have been made upon such written adjustment, but, from mistake of the facts, (as if they did know the policy contained a certain warranty while they were making the adjustment, but not that the warranty has not been complied with), or if there have been any fraud on the part of the insured, in all these cases the money paid by them may be recovered by the insurers (*l*).

Third Rule. After payment made, if there be no *fraud*, nor mistake of facts, the insurers are bound by their own act (*m*). In this case the insurers are entitled to any accruing

(*i*) "Total loss" is used with two different meanings, as above, in marine insurance.

(*k*) *Bilby* v. *Lumly*, 2 East, 469; *Bainbridge* v. *Neilson*, 10 East, 345.

(*l*) *Ibid.*; and *Chatfield* v. *Paeton*, 2 East, 471; 5 Taunt. 155; *Denham* v. *Hartley*, 1 T. R. 343; 2 T. R. 186.

(*m*) *Da Costa* v. *Firth*, 4 Burr. 1966; *De Garron* v. *Galbraith*, Park, 194. The money cannot be reclaimed, though the insured have subsequently to payment stipulated to return it; *Forrester* v. *Pigou*, 3 Camp. 380.

benefit from the goods. This last part of the third rule is part of the general law, that when the vendor has parted with goods at a price, he has lost all title to accretions arising out of such goods: it is also analogous to the rule, that where a surety has paid for the principal debtor he may afterwards stand in the place of the debtor; as if he were surety on sale of a mare, which proved unsound, he is at least entitled, on payment of the purchase-money back to the purchaser, to retain the mare, and if she is with foal to retain that also. This rule will extend to life insurance, so that after payment of the loss, if the insured should receive the amount of the debt from his debtor's executors, as in the case of *Godsoll* v. *Boldero*, the insurer will be entitled to claim such amount in the hands of the insured. So if a house have been damaged or destroyed, and, after payment on the policy, the neighbours have subscribed to reinstate the loss, the insurers would be entitled to the amount of such subscription.

When a loss by fire is reinstated, the insurers restoring old materials with new, it is not the custom for the insurers to claim a deduction of one-third the amount (as in marine insurance) for the difference between new and old materials, or to make a deduction in any other proportion of the amount.

The value of goods destroyed is made at their invoice price by the custom of marine insurance. "The nature of the contract is, that the goods shall come safe to the port of delivery, or if they do not, that the insurer will indemnify the ower to the amount of the value of the goods stated in the policy. The adjustment can never depend on future events or speculations. How long is he to wait? a week, a month, a year? The defendant did not insure that there should be no rise in the market" (*n*).

However, in valuing farming stock, there can be no invoice price; the price of the market must therefore here be taken in making the estimate. Deductions will, of course, be made from the market value in respect of expenses of carriage, and the like, not incurred when goods are burned on a farm; about ten per cent.

When a bale of goods, or any quantity of goods on which a separate price is fixed in the invoice, is partially destroyed, the rule is, to take the proportion between what that quantity would sell at if sound, and what it sells at in its damaged state: then the invoice price is diminished in this proportion, and the remainder is the amount to be paid by the insurers. By this means an exact value is obtained, which would not be

(*n*) *Lewis* v. *Rucker*, 2 Burr. 1167.

had if the selling price were taken, as the damaged part might, when market prices are high, exceed the cost price of the whole, and so the insurers have the benefit of the rise and pay nothing; or the price of the markets might be so low that goods in a sound state would only fetch the price of damaged goods, and damaged goods not sell for anything, so that the insurers would here lose by the fall of the market. In estimating the price of damaged goods, the gross proceeds, including market-tolls and other expenses (which are the same for equal bulks without regard to quality), are taken, and not the net proceeds. This rule was set by Justice Lawrence; but it seems objectionable (*o*).

Where buildings or stock are not insured to their full value, the effect would be sometimes the same as if an insurance were effected making a certain amount payable upon the loss of whichever of several properties, each of the full value of the sum insured, should be destroyed, and so from time to time whenever any of the several properties should be destroyed. To prevent this, the insurers stipulate, that the loss

(*o*) The damaged goods may realize nothing beyond the price paid for the tolls and charges of the market; the other goods may sell at a profit; yet when the selling prices of the two are compared, the proportion may be as ten to one, or in any other certain ratio: for example, if a load of damaged hay sell for 10*s.*, and 10*s.* have been paid as the charge of tolls and carriage, while a load of good hay sells for 5*l.*, including 10*s.* for tolls, the proportion is ten to one; the cost price was (suppose) 4*l.*, therefore $\frac{1}{10}$ of 4*l.*, or 8*s.*, will be, by the rule, the price to be set down as the value of the damaged hay if sold in the rick yard: while in a market giving a profit of 10*s.* in every 4*l.*, the hay would not fetch 1*s.* So, if instead of a profit there were a loss by the sale in the market, as, for example, a loss of 8*s.* per load, the selling price would be 4*l.* 12*s.* of the sound hay; 2*s.* for the damaged hay (including tolls and expenses as before), that is, the selling prices are as forty-six to one; so that, by the rule, the cost prices will be in this proportion, that is, the good hay being 4*l.* in the rick-yard, the damaged hay will be charged at about 20*d.* (which is about $\frac{1}{48}$ of 4*l.*) while in effect this damaged load paid 10*s.* in charges, and fetched 2*s.* by the sale. If it be said the rise or fall of the market is to be distributed partly on the goods and partly on the market charges and expenses, this will give a new rule, but not that in question. If the difference between the selling price and the aggregate of the cost price and subsequent charges be called profit (or loss, as the case may be), then this difference may be apportioned, so much for the goods, so much for the charges: now if the charges, increased or decreased by their profit or loss, be deducted, the remainder of the selling prices of the sound and damaged will be in proportion to their respective original prices before profit or loss was incurred. The deduction from the selling price of the sound goods being made by apportioning the profit or loss between the goods and charges, in the ratio of the goods to the charges, this amount will be deducted from the selling price of the damaged goods, since the charges are the same whatever the quality. Then the respective remainders will be in proportion to the respective prices of sound and damaged goods in a market where there has been no advance or fall, but prices are as at the place of production. If the selling prices are 10*l.* and 10*s.*, charges 5*s.*; if profit on the 10*l.* is 1*l.*, $\frac{1}{40}$ of 5*s.*, *i. e.* 6*d.*, goes to profit on charges: 9*l.* 14*s.* 6*d.* and 4*s.* 6*d.* are the prices to be compared; the ratio between them is the ratio of cost prices.

in such case shall not be paid in full, but in such proportion as the total of property covered by the insurance bears to the value for which the premium is paid, and the value stated in the policy. This is called the average clause (*p*). The Act 9 Geo. IV., c.13, which makes it necessary to value separately in insurances each detached building and all separate deposit of goods, provides an exception if the policy contain the average clause. This statute also excepts from its provisions farming implements and stock, hence insurers generally have to apply the average clause in cases of farming stock. When a society of journeymen insure their tools, in whatever buildings any of the members may be exercising their calling, the insurance must be made subject to the average clause.

On claims falling in, there is sometimes found to be an error in the statement of the age; this may either be waived or adjusted, in the latter case, by deducting from the amount the difference of premium due respectively to the alleged and the true age. Several of the new offices waive the condition of age by a general declaration to that effect in their prospectuses. The *materiality* of the variance, or grossness of the misdescription of the age, would be the point on which the statement would turn as misrepresentation, for which the reader is referred to the chapter under that head.

A certain stipulated time after the claim falling due, is generally fixed for payment by the assurers; this term serves for notice to all parties interested in the payment of the reversion thus falling due; any claims under assignment or devise, are now made known and put in. The executors or administrators are the legal payees or party to give receipts. The probate is generally required to have been taken out in the Prerogative Court, but in some cases where there is no opposition, the probate of the Diocesan Court is admitted.

Where there are counter claims of next of kin or executors, and an assignee with notice to the office, the office will pay the money into Court on a suit commenced, or they will pay the representatives of the assured, under certain circumstances under the indemnity of a bond. Where the policy has been made the subject of a family settlement, or has been assigned with notice to the office, and where the premiums have been regularly paid by or for the parties beneficially interested in the settlement or by the assignee; there will have been a subsisting priority of contract between the office and

(*p*) The word "average" has four distinct meanings in marine insurance: We must be careful not to apply the doctrine of Average in that branch of insurance to cases of fire insurance.

such parties which seems to waive all previous relations of assurer and assured, and the executor or next of kin can have no claim; but if the assurer see fraud in the commencement of the new relations, he will act with caution.

In case of a lost policy the claim will be paid under a bond of indemnity. Notice should be given to the office at the time the policy is missed.

Interest is not due until a certain number of days or months after the claim falls due, allowed for getting in proofs according to the conditions of the policy; where further cause of delay arise, in fault of the assured, as where a policy is lost, and indemnity ordered to be given by the Courts, interest will only run from the time of such order (*q*).

Where several insurances have been effected on the same property, and the assured has been paid above the declared value, the assurers may recover back the overplus so paid on the claim. There are two cases on marine insurance, *Irving* v. *Richardson* (*r*), and *Bousfield* v. *Barnes* (*s*).

CHAPTER IX.

OF THE ASSIGNMENT OF POLICIES.

Possession gives in a certain manner title to land: possession is alone sufficient to make a title to goods other than land: bills and notes, which by custom pass current from hand to hand, require no evidence of title other than possession. The custom (local or general) of merchants, can make other contracts of third parties transferable, so that every possessor of the written evidences of the contract shall have title or claim against the third parties who originally bound themselves by the contract. Thus, in the case of *Lang* v. *Smith*, the Court, in determining that the possession of certain Neapolitan Scrip gave no title to the stock or fund, declared, "the question is whether these securities, from the course of dealing, have acquired in the City the character of bank-notes, bills of exchange, exchequer bills, dividend warrants, and other instruments, which form part of the circulation of the country."

(*q*) 5 Sim. (Ch.) 635.
(*r*) 1 M. and Rob. 153; 4 Camp. 228.
(*s*) 7 Bing. 284; before Chief Justice Tindal.

By the custom of marine insurance, policies are transferable freely with the bills of lading. There is no custom recognized which makes policies of fire and life insurance pass currently to successive owners of the property insured, nor to other persons, by transfer of the possession of the policy. As a general rule, where the possession of property is in one party, and a recognized claim to it resides in another, such claim can only become a transferable interest by the possessor being a party to the transfer by some act or admission; his acceptance of notice of the transfer is sufficient for this purpose. On this general principle, several cases upon policies of life insurance have been determined. Equitable mortgagee can assign and trover for detention of deed does not lie (*u*). *Aliter* when depositee only holds for safe custody without lien (*x*). On fire insurance no case of transfer of policies has come before the Courts within a recent period. Whether, with regard to both or either of these kinds of insurance, a custom will grow up, making policies of insurance to "run with" the property insured, as custom has made several covenants (originally only personal contracts) to "run with the land," is a fair subject of speculation. In a contemporary work on Insurance it is stated, that the mercantile world are not satisfied with the decisions of the Courts against the free transferability of policies (*y*). Perhaps the decisions are sound in principle: as custom alone can give new properties to policies, separating them from bonds, trusts, covenants, and other *choses in action* (*z*). This has become a point of some importance in connexion with the recent doings at Capel Court, where "Scrip" has freely passed into circulation without notice on transfer to the original issuers of the scrip, and consequently leaving a long chain of contiguous "equities" between the holder and the first contracting party. Irrelevant points without number have been put forward in the issue of those unhappy speculations, but the keeping up a privity of contract with the issuer by notice to him on each transfer of his "stock" or scrip, having been neglected, the intermediate holders have become vouchers of the one and sureties of the issuer,

(*u*) *Hobson* v. *Mellond*, 2 Mood and R. (N. P.) 342.
(*x*) *Rawlins* v. *Desbrough*, 2 Mood and R. (N. P.) 328.
(*y*) Ellis on Fire and Life Insurance.
(*z*) From a prospectus of the "West of England," it would appear that the practice of giving notice is thought objectionable by some who do not like disclosure of assignment of their property: the prospectus accordingly states that assignments shall be valid without notice. The above decisions say they shall not be valid without notice, though the insurers have a custom not to require notice.

who is only accessible to the actual sufferer by an amount of litigation, for which the stake is probably an inadequate consideration. This evil will illustrate the case of assignment of policies, for without "notice" be enforced, why should not these be quoted with the usual accessories on the public "share list?"

Notice of Assignment of Policies.—Now with regard to *notice*. The case of *Williams* v. *Thorpe* (*a*), was where the assignees of a bankrupt were the plaintiffs in the bill: a party to whom the bankrupt had assigned the policy on his life was defendant. Though it was shown that "assigns" were mentioned in the policy, though the party taking the policy by the assignment had paid the premiums which fell due upon it in two successive years, and though it was proved by the evidence of Mr. Morgan, joint actuary of the office (the Equitable Insurance Company), that it was not the practice of the office to require *notice* of the assignment of policies, but to give effect to the assignment when proved upon the coming in of the claim on the determination of the risk: yet the Court decreed that notice was necessary under the general law of assignment of debts. The policy was ordered to be given up accordingly, as being in the reputed ownership of the bankrupt. This decision was followed up in a case which came before the Court subsequently, at an interval of three years, *viz.*, in the case *Ex parte Colville re Severn* (*b*). (The authorities are very carefully collected in this case).

With regard to the practice of the offices requiring notice of assignments, the period differs; in one office forty-two days, in another three months is allowed, in another the assignment is to be mentioned to the office as soon as possible. With regard to the form of notice this is not fixed (*c*); it must, however, be expressed and not implied. Whether verbal notice were sufficient in any case, is a fact for the jury (*d*). But secret assignment is not admissible as a *conversion* (*e*). Payment of the premium by the assignee is not notice by itself, as is shown in the case of *Williams* v. *Thorpe*. There is no case showing the precise limit of time within which it is considered requisite that notice should be given in the absence of any rules of the particular office on this point. In the case of *ex parte Colville*, more than six

(*a*) 2 Simons, 259.

(*b*) January 10, 1831; 1 Montag. Ca. Bank. 110. See *Dearle* v. *Hall*, 3 Russ. 1. See *West* v. *Reid*, V. C. Wigram, Feb. 11, 1843.

(*c*) See *ex parte Stright*, 1 Mont. 502.

(*d*) *Edwards* v. *Scott*, 2 Mann & Gr. (C. P.) 962.

(*e*) *Nutting ex parte*, 2 Mont. D. & G. (B.) 302. See *Bannatyne* v. *Leader*, 10 Sim. (Ch.) 230.

months appear to have elapsed; in the case of *Williams* v. *Thorpe*, there was an interval of fifteen months between the assignment of the policy and the claim of the assignees of the bankrupt arising by the issuing of the commission. Perhaps, in the absence of a definite rule as to any office, the Courts would fix the time by taking the average duration on a comparison of the practice of the different offices. This period being fixed, where there are two or more conflicting claims, on neither of which notice has been given to the office, the time for giving such notice being expired as to none or as to all, the first in date will have the preference.

After a commission of bankruptcy (or declaration of insolvency) has issued, it will be too late to give the *notice* to the insurance office, though with their consent, if the regular period within which, according to the rules of the office, notice should have been given, has expired. The commission issuing will prevent notice being given to complete the assignment, the regular period for notice not having expired. This principle, if not decided by the two cases above cited, is in conformity with the rule in bankruptcy against relation back to the date of the deed where enrolment is subsequent to the commission (*f*).

An *execution* taken out against the "goods and chattels," does not include *choses in action*, of which are policies of insurance (*g*); therefore, whether *execution* be in itself *notice* of transfer cannot be made a question. The "Bonus" passes under the assignment in bankruptcy in a case where a settlement was made, previous to the bankruptcy, in trustees for

(*f*) See *Perry* v. *Bowers*, 1 Jones, 196; 1 Vent. 360; *Bennet* v. *Gandy*, Carth. 178. See 12 Mod. 3.

(*g*) But the execution affects all things which *can be sold*; (the *venditioni exponas* being an essential or distinctive part of the writ); and policies, it seems, are sold at auctions: therefore, *quære?* The dictum of Lord King, in *Lynch* v. *Dalzell*, is in point: "These policies are not insurances of the specific things mentioned to be insured, nor do such insurances attach on the realty, or in any manner go with the same, as incident thereto, by any conveyance or assignment; but they are only special agreements with the persons insuring." The reasoning of Lord Hardwicke, in the case of *Badcock* v. *Sadler's Company*, on the point of assignability, appears far from conclusive: "The society are to make satisfaction in case of any loss by fire. To whom or for what loss are they to make satisfaction? Why to the person insured, and for the loss he may have sustained; for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage." This argument would be against the assignability of all warranties. It is quite clear indeed that it is the person, and not the thing, which is insured against damage; as in a life policy, it is not life which is insured against its natural termination, but it is a loss consequent upon the death of an individual, to third parties, which constitutes the cause of indemnity. Nevertheless, the parties to be damified by such loss may vary at intervals of time, and it is for their benefit that large funds are raised by mutual subscriptions.

wife and children (*h*). As to who is agent to be affected with *notice*, the usual agents or officers of the company receiving the articles of agreement for policies will be those to take the notice.

Interest of Assignees of Policy.—The case of *Ashley* v. *Ashley* (*i*) was this: a policy on the life of *A. B.*, executed in 1802, was assigned to *H.* in March, 1810, in consideration of 5*s.*; *H.* died in October, 1810. A suit was instituted in Chancery against the executors of *H.* by *A. B.* the insured; the executors sold the policy under a decree of the Court of February, 1815. In August, 1817, the executors assigned the same to General Ashley. In 1817, General Ashley died: a sale of the policy, under a decree of the Court, took place in 1819. *F.* became the purchaser. Objections were made to the title of the vendors on the part of the purchaser. The Court directed a reference; the Master reported in favour of the title. Exceptions to the report came on for hearing. The Court ordered that the report should be confirmed. His Honor, the Vice-Chancellor, stated the question to be, "whether the dealing with the policy had been such that a Court of Equity would compel the assured to permit the assignee to sue in his name in bringing an action on the policy." In this case, the dealing had been under decrees of the Court: a case therefore certainly had arisen where there was such equity as against the assured. The next case is *Barber* v. *Morris* (*k*). The policy on a life was issued on 18th September, 1813. The life was the grantor of an annuity; the grantee of the same was the insured: the annuity bore even date with the policy. An agreement to redeem the annuity, under a provision to that effect in the grant, was entered into at the end of the year 1824; the assignment of the annuity was executed 24th May, 1825. The sale of the policy by the insured to the plaintiff was completed 8th April, 1825. Before this, Morris, the insured, had offered the policy to the Pelican Office, whence it had issued: they agreed to pay him 60*l.*, which he refused to accept. On this action to recover back the purchase-money, on the ground of there not being in the vendor an insurable interest, the Court decreed for the defendant, stating, in delivering the judgment, that whether the vendor had an insurable interest or otherwise, there was "an expectation of payment from the office which was assignable." Mr. Scarlet, as counsel for the defendant, put his defence on this general view of the transferability of expectancies, in-

(*h*) *Parkes* v. *Bolt*, 9 Sim. 388.
(*i*) 3 Sim. 149.
(*k*) 2 Mos. & Mel. 62.

stancing a *bet* as being assignable (*l*). The decree was made on the custom of the offices. A distinction was drawn between these cases and that of *Godsoll* v. *Boldero*, the latter being a claim by the insured, these of claims of assignees.

Assignees of life policies have their claim generally allowed in case of the determination of the life by duelling or suicide: most of the new offices express this in their prospectuses; but the condition is general, perhaps almost universal.

(*l*) *Quære* this.

PART II.

CHAPTER I.

EFFECT OF THE INSURANCE ON OTHER CONTRACTS.

HAVING considered the contract of insurance as to the mutual relations of the insurer and insured, we will now consider how the parties to other contracts are affected when the thing which such contract concerns happens to be also the subject of insurance (*a*).

It may be well doubted whether a policy of insurance classes as "goods and chattels" against which the process of execution can be enforced. Bills and notes are held to be excluded, because they cannot be the subject of a sale, so that the writ cannot take effect as to them by its precept to the sheriff, "*Venditioni exponas.*" Yet a policy can (according to the practice sanctioned by the Courts) be sold. An *extent* from the Exchequer would reach a policy, as the sheriff can seize debts under stat. Hen. VII. By attainder the policy must, it should seem, be held to pass to the Crown; so by *escheat*, a policy of insurance against fire must be held to cease until the lord by escheat give notice of his title to the insurers.

When the landlord has entered for forfeiture of any lease, or is *in* of his reversion, the policy ceases as to the tenant; it will pass to the landlord on his giving notice of his title to the insurers. By the Building Act, 14 Geo. III. c. 78, s. 83, the insurers may, at their discretion, lay out the money in reinstating the buildings burnt down, instead of paying the amount to the insured. This Act only extends to places within the bills of mortality; but a similar proviso, without restriction as to places, is generally inserted in policies.

(*a*) A loan upon grant of annuity, the grantor of the annuity to take out and keep up a policy of insurance to the amount, for the benefit of the grantee of the annuity, is not usurious, because the policy is not an absolute security for repayment of the principal; the policy may become forfeited by suicide, and the like. These accidents, attendant upon the security by insurance, were the ground of the decision *in re Marsh*, 7 Bing. 150.

No payment made to a bankrupt after the date and issuing of the commission is valid: therefore, after that period, no title under the policy exists except in the assignees (*b*). The policy passes to the assignees notwithstanding any assignment by the bankrupt previous to the commission, if such assignment were not accompanied with notice to the insurers; it being considered a case of *reputed ownership* in default of such notice (*c*).

This being an executory property, cannot be a *donatio causâ mortis*. The devisee or legatee of a policy is not entitled to receive the amount of the claim under the testator's policy directly from the office, without the assent of the executors; wanting such assent, he must receive it through the executors. Executors should get in the assets in twelve months; should they neglect to claim under the policy within twelve months, this would be an implied consent that the legatee should claim.

It is said that a policy (of fire insurance) is not a covenant *running* with the land, nor in any way concerning the realty. But if a man, having a freehold estate of inheritance in a house, were to die, leaving no property other than the freehold house, and an unexpired policy of insurance on the house, would the policy constitute *bona notabilia* within the jurisdiction of the spiritual courts, or would it be considered as accompanying the realty?

Money recovered upon a loss by fire under a policy, was held to follow the uses of a settlement of the real estate, which comprised the house burnt down. The settlement was to the use of *J. B.* for life, remainder to *W. B.* for life, remainder to *J. B.* in fee. The money had been paid to *J. B.* who placed it in the funds instead of rebuilding the houses, but he left a memorandum that the money so invested was recovered for a loss on the settled property (*d*).

So where in an annuity charged on the real estate under the will, the executrix had renewed a policy of insurance taken out by the testator previously to date of his will, upon a house, the only real estate of the testator; upon a bill for an account filed by the annuitant, the proceeds of the insurance were decreed to be paid into Court as trust monies liable to the annuity for lives (*e*). Where a testator bequeathed two policies of insurance by his will on certain trusts, and after making his will received the money on the respective losses happening

(*b*) *Colville and Geddes in re Sweeny*, 1 Mont. 110; *Cox* v. *Listard*, Doug. 166.
(*c*) *Williams* v. *Thorpe*, 2 Simons, 257; and *Colville and Geddes*.
(*d*) *Norris* v. *Harrison*, 2 Mad. 268.
(*e*) 3 Simons. 77; *Parry* v. *Ashley*.

under the policies, this was ruled to be an ademption of the legacy (*f*).

There is another case, which will be here cited, for the double purpose of showing that a policy of insurance may be the subject of the usual limitations of real estate, and that the accretions or profits added to the policy (according to the rules of the insurance company so distributing their surplus capital among the insured) follow the uses of the settlement. By the marriage settlement of the daughter, a policy on her father's life was vested in trustees, and power to dispose of the policy by will was given to the daughter. She bequeathed this accordingly in three portions. It was held to pass accordingly. The policy was for 3,000*l.*, and in the settlements and will it was described as "the sum of 3,000*l.* for which *A.*'s life was insured," and by the will 1,000*l.* was the amount of each portion. 9,000*l.* was received under the policy by the addition of Bonuses. It was decided by the Vice-chancellor, Sir J. Leach, that the 9,000*l.* passed by the will, and 3,000*l.* passed by each bequest of "1,000*l.*, part of the sum of 3,000*l.*"

When an annuity, with which as a collateral security a policy on the grantor's life is taken out by the grantee, is paid off, the premiums of insurance are not recoverable by the grantee against the grantor of the annuity, unless in the grant of annuity there were a stipulation to that effect (*g*). When the grantor of an annuity becomes bankrupt, a policy on his life, taken out by the grantee, will be directed to be sold; the proceeds of the sale, after payment of expenses, to go "in payment to the grantee of what shall be due to him in respect of his payment for premiums and interest, and also in respect of the value of the said annuity, and the arrears thereof, as far as the same will extend to pay and satisfy;" the grantee is then allowed to prove for the remainder under the commission (*h*).

Proof on policies, where the loss has not yet happened, may be made by the creditor holding the policy at the time of bankruptcy of the debtor: this was settled in *Cox* v. *Listard*, (before cited) (*i*).

The executor, and not the heir, (though the houses descend to the heir), is entitled to recover where the policy is made payable to one and his executors, administrators and assigns,

(*f*) *Barker and Wife* v. *Raynor*, 5 Madd. 208.

(*g*) *Burder* v. *Browning*, 1 Taunt. 522; See 5 Ves. 620, 623. Where the annuity is higher in consequence of the insurance, this is not usurious; *Holland* v. *Pelham*, Exch. June 8, 1831.

(*h*) *Tierney ex parte*, 1 Mont. 78.

(*i*) Dougl. 166, note.

which is the usual form (*k*). It is sometimes provided, by the deed of constitution of insurance companies, that policies shall be considered personal estate.

Where there is a partnership, and one of the partners is, under the articles of partnership, constituted sole owner of the building, and he takes out an insurance, and the house is burnt down; under a commission of bankruptcy against the partners, the money recovered under the policy is considered the separate estate of that partner (*l*).

Where a trader assigned to a creditor, as security for his debt, a contingent interest, limited on the event of his wife surviving her mother, and the creditor insured the life of the wife, and she died, and the husband subsequently became bankrupt; the creditor's proof, under the commission, was limited to the difference between the sum recovered on the policy, and the full amount of his debt. The sums paid by him for premiums on the policy were also allowed in the account (*m*). This is the converse of the case *Godsol* v. *Boldero*.

In a case where a debt was contracted by the bankrupt after the bankruptcy, and the creditor then took out a policy on the life of the bankrupt, and, on the life determining, recovered from the insurers, declaring in the action, on two counts, under the first as for an interest in himself, and under the second count as for an interest in the assignees, and he recovered on the second count; on an action by the assignees to recover from him the sum paid by the insurers, it was determined that the action was not maintainable by the assignees (*n*).

So there is no lien, for part of purchase-money unpaid, on a policy taken out by the purchaser of goods or houses (*o*). There is a case where the mortgagee for a term dependant on a life, insured on that life to the amount of the mortgage-money, and recovered from the insurers, having previously entered into a further contract with the mortgagor for purchase of the fee at a certain price, with the proviso that the amount of life-interest should be deducted from the price of the fee simple. It was decreed by the Vice-Chancellor that the mortgagee should have the deduction of the value of the life-interest, and should also retain the sum which he had recovered from the insurers under his policy taken out on that life, and that the vendors were not entitled to any benefit under such policy (*p*).

(*k*) *Mildmay* v. *Folgham*, 3 Ves. 472.
(*l*) *Ex parte Smith*, Buck. 149; 3 Mad. 63.
(*m*) *Ex parte Andrews*, 1 Madd. 574.
(*n*) *Grant* v. *Atkinson*, 4 Taunt. 380.
(*o*) *Neale* v. *Reid*, 1 B. & C. 661; 3 Dowl. & Ryl. 158, *S. C.*; See 2 Stark. 401, 402.
(*p*) *Watson* v. *Bruton*, Sitt. after Hil. Term, 1830.

A promise to procure an insurance to be effected, makes the party promising liable in case of loss without an insurance having been effected according to the promise (*q*).

Where it is among the conditions of sale of a life-interest that the life was insurable, any concealment of material circumstances will make void the contract. In this case the life was described in the particulars of sale, and at the sale, as "very healthy, aged 48," and "healthy gentleman, aged 48, whose life is insurable." The auctioneer stated "insurance to be guaranteed at five guineas per cent." Something, it was alleged, was also said about an allowance by way of abatement in the purchase-money would be made if the insurance offices required a larger premium than five guineas, but this was afterwards taken out of the bill. Now it was proved that about four guineas was the usual premium on a good life of the age of 48; and it was argued for the vendors, that the stating that five guineas was the expected premium operated as notice to the purchasers that the life was not a good life. The defendants admitted that they knew that five guineas was greater than the premium for a healthy life, but denied that this was notice to them of the life being unhealthy. The Court decreed that there was not notice to the purchasers as to the life being other than a good life, and dismissed the bill for enforcing specific performance of the purchase. In this case one surgeon stated the life was good in June, 1828, but he did not know as to the state of health in January, 1829: another medical man stated that it was good except as to rheumatism in Nov. 1828; other evidence went to prove, that except rheumatism it was a good life in April, 1829; but it was proved that previously the party had had cow-pox and the gout. He had a paralytic stroke in May; having been refused on an application to insure in the Guardian and the Equitable on the 2nd April. The sale was in November, 1828 (*r*).

A carrier is not liable for goods burned in his warehouse where they were left for the owners to take away when they pleased, being left there after notice of their arrival in the carrier's custody to the owners. One of these carriers having paid the loss, he was not entitled to recover from his partners any portion of the amount, or to make it a partnership transaction (*s*).

With regard to the relations of vendor and purchaser where

(*q*) *Wilkinson* v. *Coverdale*, 1 Esp. Rep. 75; *Wallace* v. *Telfair*, 2 T. R. 188, n.

(*r*) *Brealey* v. *Collins*, 1 Young, Exch. 317.

(*s*) *Wilkinson* v. *Coverdale*, 1 Esp. Rep. 75.

the property is destroyed by perils which are the subject of insurance, see Sugden's Vendor and Purchaser, cap. 5, sec. 2. It is shown, that by the rule in equity the loss falls on the purchaser after the agreement to purchase has been settled, but not where the purchaser has made objections to the title, which remain unanswered at the time of the loss. Where the sale is before a Master in Chancery the rule is different, the loss falls on the vendor and not on the purchaser, until the report of the sale has been absolutely confirmed, even though an order *nisi* to confirm the report should have passed (*t*). In the same section the rule is stated as to the case of an annuity on the life of vendor, granted by purchaser as consideration for the sale to him; here, if vendor die immediately, the loss falls on that party, not on purchaser.

Whether an agreement to take a house and pay rent can be enforced where the premises are consumed by fire before the day appointed for the defendant's entry, is doubtful (*u*). A covenant for quiet enjoyment does not extend to oblige lessor to rebuild in case of fire (*x*).

If a lessor covenant in a lease with his lessee to rebuild in case of fire, he is only bound to replace the premises as they were at the time of the lease, not with the additions made by the tenant (*y*). A lessee who covenants generally to repair, is bound to rebuild it if it be burned by accidental fire, by lightning, or by the King's enemies (*z*). Tenant for years is bound to rebuild in case of fire, though no covenant (*a*). So where one holds over after his lease expired, though he hold over under a verbal agreement only, he is bound by the covenant to repair contained in the lease, and therefore must rebuild in case of fire (*b*). If there be a covenant to repair, it is not

(*t*) The cases cited are 2 vol. Coll. of Decisions, p. 56; *Paine* v. *Meller*, 6 Ves. 349; reversing *Stent* v. *Bailey*, 2 P. Wms. 220; and *White* v. *Nutt*, 1 P. Wms. 62. References are there given also to 2 Vern. 280, and to *Poole* v. *Shergold*, 2 Bro. C. C. 118; *Revell* v. *Hussey*, 2 Ball & B. 280; *Harford* v. *Purrier*, 1 Madd. 532.

(*u*) *Phillipson* v. *Leigh*, Esp. Rep. 398; *Paradise* v. *Jane*, Aleyne, 26; *Monk* v. *Cooper*, 2 Str. 763; 2 Ld. Raym. 1477; *Belfour* v. *Weston*, 1. T. R. 310; *Doe* d. *Ellis* v. *Sandham*, *id.* 705, 710; *Cutter* v. *Powell*, 6 T. R. 323; *Hare* v. *Groves*, 3 Anstr. 687; *Baker* v. *Holtzapffell*, 4 Taunt. 45; 18 Ves. 116. The above are affirmative. Contra, *Brown* v. *Quiliter*, Ambler, 619; *Steele* v. *Wright*, 1 T. R. 708 (cited). See also *Weighall* v. *Waters*, 6 T. R. 488; 2 Anstr. 575.

(*x*) *Brown* v. *Quiliter*, Ambl. 619, 620; see *Bayner* v. *Walker*, 3 Dow. P. C. 233.

(*y*) *Loader* v. *Kemp*, 2 C. & P. 375; *Quære*, as to covenant of lessor to insure.

(*z*) *E. Chesterfield* v. *D. Bolton*, 2 Com. Rep. 627; *Bullock* v. *Dommitt*, 6 T. R. 650; Dyer, 33; 2 Chit. Rep. 608; *Poole* v. *Archer*, 2 Show. 401; *Pym* v. *Blackburn*, 3 Ves. 34; Co. Litt. 37, a. n. 1.

(*a*) *Rooke* v. *Warth*, 1 Ves. 462.

(*b*) *Digby* v. *Atkinson*, 4 Camp. 275.

limited to the sum mentioned in a subsequent covenant settling the amount to which insurance is to be effected (*c*). A covenant to insure premises within the bills of mortality, as in 14 Geo. III. c. 78, is a covenant running with the land (*d*). Where the lessor had insured previously to the lessee insuring, under a covenant that the lessee should insure to the amount of two-thirds of the value of the buildings, and in the joint names of the lessor and lessee: lessor claimed as for a forfeiture, the lessee not having insured in the joint names, but in his own name only: it was held that the lessor having done what would lead a reasonable and cautious man to conclude that he was doing all that was necessary as to insurance, could not recover for a forfeiture (*e*). The statute 6 Anne, c. 31, which restores the common law as it was before the Statute of Gloucester, *viz.* taking away the liability of tenants for damage by accidental fire, does not prevent the liability to rebuild under the covenant to repair; nor the liability to continue to pay rent though the premises are lying in ruins by accidental fire (*f*). But where accidents by fire are excepted, the covenant does not oblige lessee to rebuild (*g*): the lessor is not bound to rebuild (*h*). An injunction will not lie to stay an action for payment of rent while the premises are lying waste after fire (*i*): even where there is an exception of accidents by fire in the covenant to repair, an injunction will not lie to an action for rent (*k*). Where the landlord is bound to repair, and the tenant, from sudden accident, is compelled to make repairs, he may set it off as money paid to the use of the landlord in an action for rent (*l*). A covenant to insure in "some sufficient insurance office" is not void for uncertainty, but means that the premises shall be insured in some office where such insurances are usually effected (*m*).

Where the lessee under a covenant to insure within the

(*c*) *Digby* v. *Atkinson*, 4 Camp. 275.

(*d*) *Vernon* v. *Smith*, 5 Barn. & A. 1.

(*e*) *Doe* d. *Knight* v. *Rowe*, 1 Ry. & M. 343; 2 C. & P. 246.

(*f*) *Belfour* v. *Weston*, 1 T. R. 310; *Weighall* v. *Waters*, 6 T. R. 488; *Hare* v. *Groves*, 3 Anstr. 687.

(*g*) *Bullock* v. *Dommitt*, 6 T. R. 651; 2 Chit. Rep. 608; *Tempany* v. *Burnand*, 4 Camp. 20; *Brown* v. *Knile*, Brod. & B. 395; 5 Moore, 164.

(*h*) *Bayne* v. *Walker*, 3 Dow. P. C. 223.

(*i*) *Belfour* v. *Weston*; *Baker* v. *Holtzapffell*, 4 Taunt. 45; *Hare* v. *Groves*, 3 Anst. 687.

(*k*) *Holtzapffell* v. *Baker*, 4 Taunt. 45; *Hare* v. *Groves*, 3 Anstr. 687. But where the lessor has insured, and recovered from the insurers, an injunction until the house is rebuilt will lie to an action for rent; *Brown* v. *Quiliter*, Ambl. 619, 620. Where there is no exception of accidents by fire, an injunction will not lie; *Leeds* v. *Chatham*, 1 Sim. 149.

(*l*) *Waters* v. *Weighall*, 2 Anstr. 575.

(*m*) *Doe* d. *Pitt* v. *Shewinn*, 3 Camp. 134.

fifteen days after expiration of the year allowed by the offices for taking out renewals of policies, made payment subsequently; though the acceptance by the office was expressed to be "as reviving the insurance from the former year," the covenant was held broken (*n*). Where the lessee died, and his representatives had an indorsement of their *interest* made on the policy, as required by the forms of the office, and accepted by them, but it was not made till after the three months allowed for that purpose, this was held to be no breach of the covenant (*o*). Equity will not relieve against a forfeiture, for a breach of covenant to insure, in a lease (*p*).

The Building Act (14 Geo. III. c. 78, s. 83) provides, in respect of buildings within the weekly bills of mortality, that "It may be lawful for the directors and governors of the several insurance offices, and they are hereby authorized and required, upon the request of any person or persons interested in or entitled unto any house or houses or other buildings which may hereafter be burned down, demolished or damaged by fire, or upon any grounds of suspicion that the owner, occupier, or any other person, &c., who shall have insured such house or other building, have been guilty of fraud, or of wilfully setting their house or other building on fire, to cause the insurance-money to be laid out and expended, as far as the same will go, toward rebuilding, re-instating or repairing such house or houses or other buildings so burnt down, &c., unless the party claiming such insurance money shall, within 60 days next after his claim is adjusted, give sufficient security to the governors or directors of the insurance office where such house or houses or other buildings are insured, that the same insurance-money shall be in that time settled and disposed of to and amongst all the contending parties, to the satisfaction and approbation of such governors and directors."

(*n*) *Ibid.*
(*o*) *Doe* d. *Pitt* v. *Laing*, 4 Camp. 73.
(*p*) *Rolfe* v. *Harris*, 2 Price, 206, n.; *Reynolds* v. *Pitt*, *ib.* 212, n.; 10 Ves. 134; *White* v. *Warner*, 2 Meriv. 459.

PART III.

CHAPTER I.

INSURANCE COMPANIES: AGENTS.

INSURANCE being generally conducted by extensive partnerships or companies, it becomes important to inquire into the leading duties and liabilities of partners, so far as the duties and liabilities of partners generally enter into inquiries relative to the contract of insurance. The statute 6 Geo. I. (the "Bubble Act") was repealed by 6 Geo. IV. cap. 91, which has left joint-stock companies as at common law. By the common law of England, partnerships, with liabilities limited to the capital subscribed, and in proportion to the subscription of each partner, are not allowed: though such restricted partnership liabilities are, according to the law of several of the Continental States of Europe. See H. Bl. 1. 37; and were allowed to certain companies in Ireland under 21 & 22 Geo. III. c. 46.

The limitation of liabilities to a certain extent per share, was provided by § 4 of the statute 1 Vict. c. 73, which repealed part of the foregoing, and also 4 & 5 Will. IV. c. 94: it gave a general right of suing and being sued in the name of an officer or officers of the company (*q*); and § 5 provided for the transferability of the shares on due notice. Joint-stock companies are now regulated by the recent statute 8 Vict. c. 16, the Act 7 & 8 Vict. c. 110, providing for their registration provisionally in the first instance, and *completely* on the full establishment of the company. The bankruptcy of joint-stock companies comes under the 7 & 8 Vict. c. 111, which puts the company or its directors on the same footing as an individual bankrupt, and orders the appointment of a receiver. The 8 Vict. c. 16, which is to be quoted as the *Companies Clauses Consolidation Act*, embodies the principal provisions of 7 & 8 Vict. c. 110, but provides a more effectual registry of shares, and for the regular transfer thereof with due notifica-

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Where fraud is alleged a plaintiff shareholder need not join in his bill, all the directors (*b*).

Where a partnership is managed by a joint-stock company, and no term is fixed: it is stated that a Court of Law will not interfere (*c*).

Where a shareholder is plaintiff in an action for goods delivered by him, it is necessary that another shareholder appearing as witness, should be released by all the defendants (*d*).

Where the directors appropriated 400 shares of 50*l.* each, and afterwards accounted only for three-fifths of the amount, they were held accountable for the remainder (*e*).

There are exceptions to the general rules here given. Any member of a firm may be sued by the others, in equity, if a general balance of accounts between the firm and such individual have been struck, or if the bill pray also a dissolution of the partnership (*f*). Also, if he have fraudulently or improperly possessed himself of partnership property, relief will be given to the partnership in equity against the individual member of the firm, and generally where the plaintiff alleges fraud (*g*).

The liabilities of any individual member commence with the actual or complete formation of the company, and not at any prior date during the preliminary or provisional arrangements (*h*). One partner cannot bind the others by negotiable instruments. The "special act" or custom will decide as to drafts or bills of a director (*i*).

As to production of papers. When the company is dissolved, a shareholder is entitled, though there be an express clause "shareholders not to inspect" (*k*).

The Courts of Law have relaxed the rule with regard to suits between the company and third parties. In the case of *Andrews* v. *Ellison* (*l*), the defendants pleaded, against a claimant

(*b*) 9 Sim. (Ch.) 556.

(*c*) See *Miles* v. *Thomas*, 9 Sim. 606.

(*d*) *Betts* v. *Jones*, 9 C. & P. (N. P.) 199.

(*e*) *Soc. of Prac. Know., re Abbott*, 2 Beav. (Ch.) 559.

(*f*) See Gow on Partnership, p. 84; *Foster* v. *Allanson*, 2 D. & E. 479; but a bill for an account, without praying a dissolution, may be maintained, 4 Madd. 143; 1 Sim. & Stu. 124.

(*g*) *Foster* v. *Donald*, 1 Jac. & W. 252; 9 Sim. (Ch.) 566.

(*h*) *Fox* v. *Clifton*, 6 Bing. 776; *Dickinson* v. *Valpy*, 10 B. & C. 142; *Bourne* v. *Freeth*, 9 B. & C. 632; *Pitchford* v. *Davis*, 5 M. & W. 2; and *Harvey* v. *Kay*, 9 B. & C. 356; *Ellis* v. *Schmœck*, 5 Bing. 521; *Lawley* v. *Kershaw*, M. & M. 93; *Doubleday* v. *Muskett*, 4 M. & P. 750; 7 Bing. 110. But see *Carter* v. *Whalley*, 1 B. & Ad. 11; *Parkin* v. *Carruthers*, 3 Esp. 248; *Waugh* v. *Carver*, 2 H. B. 235.

(*i*) *Bramah* v. *Roberts*, 3 Bingh. N. C. 963. See 10 B. & C. 142. See *Tredwen* v. *Bourne*, 6 M. & W. 465.

(*k*) *Hall* v. *Connell*, 3 Y. & Cr. (Ex.) 707.

(*l*) 6 Moore, 199; where the force of the words of the agreement is dis-

under a policy, that they, the subscribing directors, were not bound; a *rule nisi* was obtained for the arrest of judgment upon a verdict against the defendants. The Court decreed that judgment should not be arrested, the subscribing directors having "stipulated and declared" that they would pay out of the funds of the society. In the case of *Lefevre* v. *Boyde* (*m*), on a rule for a new trial, it was decreed that the plaintiffs were sufficient parties to the action, they having subscribed and *sealed* the policy as director and trustees.

At to commissions of bankruptcy, the case *Ex parte Guthrie in re Savery*, is an authority that the officer of the society appointed by an Act of Parliament to sue cannot take out a commission of bankruptcy. But even under the commission of one who is a shareholder, the partnership are allowed to prove the debts of the society: this was the case under the bankruptcy of Fauntleroy, who had the accounts of the Stratford Club, of which he was a member, at his bank.

In the action for recovering premiums paid on a policy, the parties to be sued are the principals, and not the agents who received the money (*n*). But there are exceptions to this rule. If the principals are an extensive association, yet are not corporate bodies, nor capable of being sued as corporate bodies, or otherwise, the action may be brought against the agent (*o*). If the agent have obtained possession of the money illegally (*p*): if the money were paid to the agent without expressing that it was so paid for the benefit of the principal (*q*): in either of these cases the agent may be sued. If, after the money was paid to the agent, but before he had paid it over to his principal, the party paying gave notice to rescind the contract and repay the money, though he shall have paid it to the principal afterwards, the agent may be sued (*r*). In all cases the agent may be sued if the money be not yet paid over to his principal by the agent: although he may have placed the money to the credit of his principal in his accounts (*s*).

Without actual receipt of the money an agent's credits in a running account with third parties discharge their debts to

tinguished from that of a case where the parties subscribing a policy "do order, direct and appoint the directors, &c., to pay," which words did not raise an agreement to pay on the part of the subscribers.

(*m*) K. B. Trin. Term, 1832.

(*n*) *Sadler* v. *Evans*, 4 Burr. 1984; *Greenway* v. *Hurd*, 4 T. R. 553; *Horsfall* v. *Handley*, 2 Moore (C. P.) 5; 8 Taunt. 136, *S. C.*

(*o*) *Miller* v. *Avis*, B. R. Sitt. after M. T. 1801.

(*p*) *Townson* v. *Willson*, 1 Camp. N. P. 396.

(*q*) *Snowdon* v. *Davis*, 1 Taunt. 359.

(*r*) *Edwards* v. *Hodding*, 5 Taunt. 815.

(*s*) *Buller* v. *Harrison*, Cowp. 566; *Cox* v. *Prentice*, 3 M. & S. 344.

an assurer employing such agent (*t*). An agent cannot bind the company in borrowing (*u*).

Any agent of a company can make a valid indorsement altering a policy, if such be the custom of the company, and if they do not refuse at the time (*x*). When an agent is bankrupt, and a claim under a policy has been made through him, the office cannot set off against his credit in this transaction a debt for amount of premiums in his hands (*y*). By the stat. 57 Geo. III. c. 117, "No extent in aid shall be issued on any bond given by any person or persons as a surety or sureties for the paying or accounting for any duties which may become due to His Majesty from any body or society, whether incorporated or otherwise, carrying on the business of insurance against any risks, either of fire or of any other kind whatever" (*z*). Agents of insurance companies are therefore the objects of an extent in chief taken out by the Stamp-office, and not of an extent in aid taken out by insurers. Insurance companies are not allowed to make "re-assurance," *i. e.*, to insure the risks of their policies with another insurance company, unless such first insurers be insolvent, become bankrupt or, (if single insurers,) in case they die, when their representatives may make re-assurance (*a*). In case the insured become bankrupt, and the assignees claim for a loss happened subsequently to the bankruptcy, the insurers may set off premiums due upon the policy against the claim of the assignees (*b*).

The companies and their agents are accountants to the Crown for duties paid on policies (*c*), by stat. 55 Geo. III. c. 184. By the above statute the receipts of the insurers to the insured are not liable to stamp in respect of the amount of duty, but only of premium contained in them. If there be several insurances in different insurance offices on the same property, all are to contribute proportionally, and no more can be recovered on the several insurances than the amount of the loss (*d*).

It seems unnecessary to comment on the cases of the "Independent West Middlesex Company," or to allude to circum-

(*t*) *Stewart* v. *Aberdeen*, 4 M. & W. 211.
(*u*) *Hawtayne* v. *Bourne*, 7 M. & W. 595.
(*x*) *Broklebank* v. *Sugrue*, 5 Carr. & P. 21.
(*y*) *Scott* v. *Irving*, 1 B. & Ald., 605.
(*z*) *Rex* v. *Wrangham*, Exch. May 2, 1831.
(*a*) 19 Geo. II. c. 37.
(*b*) *Graham* v. *Russell*, 5 M. & Sel. 498; 2 Mont. 561.
(*c*) Public hospitals and property in any foreign friendly State, are exempted from duty.
(*d*) *Newby* v. *Read*, 1 Bla. 416; *Rogers* v. *Davis*, Beawes's Lex Merc. 242; Park, Ins.; *Davies* v. *Gilbert*, *Ib.*

stances of such notoriety, except by naming some of the cases these have added to the reports. The title of "Insurance" certainly comprises the cases of *Hoyle* defendant, in the respective suits of *Napier* and *Stanley*, but no point in the ordinary liabilities or rights of companies are touched by them. The case of *Lamez* v. *Bent* (*e*), was an action against a co-director upon the acceptances of one Clarke of the "European," a scheme of that day, but this case broke down for want of evidence.

CHAPTER II.

OF THE PROCEEDINGS ON POLICIES OF INSURANCE.

An usual clause of policies is, that matters in dispute shall be referred to arbitration. In whatever form this clause is put, it will not take away the jurisdiction of the ordinary Courts of Law in the matter. But if a reference be pending, this may be pleaded in bar to an action (*a*). Where the amount only is in dispute the agreement to refer may be enforced (*b*). The Courts of Equity have jurisdiction in this as in all other contracts where there is fraud, mistake or accident (*c*); but equity will not make a decree where the parol averments to alter the contract are contradictory (*d*). Equity has also jurisdiction in aid of the Common Law Courts, as to direct a commission to take the evidence of witnesses abroad (*e*): also where the policy was taken out by a trustee, and the trustee would not allow his name to be used in an action at law (*f*), and this court will order a fraudulent policy to be delivered up while the contract remains executory (*g*). But the remedy is at common law, except under the above circumstances (*h*).

For many of the following points of practice in this Chapter, the author is under obligations to Mr. Ellis's Treatise on Insurances, and to Mr. Hughes's Work on this subject.

A bill of interpleader will lie where both landlord and

(*e*) K. B. 1830.

(*a*) *Kill* v. *Hollister*, 1 Wils. 129. See further as to Arbitration, *Goldstone* v. *Osborn*, 2 C. & P. 550.

(*b*) *Thompson* v. *Charnock*, 8 T. R. 139.

(*c*) *Henkle* v. *Royal Exchange*, 1 Ves. sen. 318. *Motteux* v. *London Assur.*, 1 Atk. 545.

(*d*) *Henkle* v. *Royal Exchange*, 1 Ves. sen. 317. See 1 Ves. jun. 57; 3 Bro. 27; 5 Ves. 593; 6 Ves. 328.

(*e*) *Chitty* v. *Selwin*, 2 Atk. 359.

(*f*) 1 Atk. 547; 2 Atk. 359.

(*g*) *Fenn* v. *Craigh*, 3 Y. & Coll. 216. But see also *Desborough* v. *Curlewis*, 3 Y. & Coll. 175.

(*h*) *De Ghetoff* v. *London Assur.*, 4 Bro. P. C. 496, or 525.

tenant sue the insurance office (*i*). An action at common law may be brought in the name of the party or parties whose names are in the policy, or of one of them where one is only interested (*k*). It is sufficient that the action be brought in the name of the party to the policy, though others are jointly interested (*l*), and though he be only agent (*m*). The action should not be brought against an agent, though he have subscribed the policy, but against the principal. An insurer cannot be held to bail at the suit of the insured, unless the damages have been liquidated by an adjustment of the account between the parties (*n*).

The remedy is assumpsit if the policy be not under seal, or debt or covenant, if under seal: it is *special assumpsit*, with counts charging generally (which are always necessary for the recovery of premiums). If the action be only to recover premiums, it will be the general *indebitatus assumpsit* for money had and received to his use. In all cases it is proper, after the count for *special assumpsit*, to add general counts, in order that if the contract is declared void, the premiums may be recovered (*o*). When the action is brought by the assurer for recovering back the indemnity on discovery of fraud, or the like, the action is the common *indebitatus assumpsit* for money had and received (*p*).

In the action of the insured, the declaration sets forth, 1st, The policy; 2d, The defendant's subscription to the policy; 3d, The thing insured; 4th, The name or names of the parties interested; 5th, The cause of loss; 6th, The amount of loss. A particular form of declaration is allowed by statute to some of the insurance offices; which, however, is not in practice resorted to.

1st. The policy must be described according to its true effect; any material variance will be fatal. It is material to state the regulations indorsed on the policy forming the conditions of the insurance, also all indorsements altering the policy after it was executed (*q*). It is not material to state that the instrument was stamped, nor that the parties interested were described in the policy, for though their names must be inserted according to the statute, yet that not being

(*i*) *Paris* v. *Gilham*; *Jones* v. *Paris*, Coop. 56.

(*k*) *Marsh* v. *Robinson*, 4 Esp. 98.

(*l*) *Cosack* v. *Wells*, 1 Chit. Plead. p. 5, (4 edn.)

(*m*) *Parker* v. *Beasley*, 2 M. & S. 426; *Hagedorn* v. *Oliverson*, *Ib.* 485; 2 B. & A. 314; 16 East, 141. 341; 2 Bos. & P. 155, n.

(*n*) *Lear* v. *Heath*, 5 Taunt. 201; 1 Marsh. 19; *Ib.* 21; 1 M. & S. 494. 499; 5 M. & S. 439. An alien may sue, *Pisani* v. *Lawson*, 6 Bing. n. c. 90.

(*o*) Selwyn, N. P. "Assumpsit."

(*p*) 2 Marsh. 740; 2 East, 469; *Herbert* v. *Champion*, 1 Camp. 134.

(*q*) *Strong* v. *Hervey*, 3 Bing. 304; 11 East, 633; 4 Camp. 20; 1 Stark. 294; 7 Taunt. 385; 2 B. & C. 20.

necessary at common law, need not be stated in pleading. Subsequent counts may refer to the first, describing the policy as of the same tenor or effect. It is necessary in the first count to state the policy in its exact terms, omiting clauses which do not apply to the case (*r*). When the policy was made on the part of the insured through an agent, it may be stated as made by the principal (*s*).

2d. A general averment that the defendant became an insurer on the premises mentioned in the policy is sufficient. The consideration must be stated to be the premiums mentioned in the policy renewed annually (*t*).

3d. It is sufficient to state generally that the life or goods as mentioned in the policy are the goods or life on which the loss has happened.

4th. In the averment of interest, if the party be described as interested in a part, when his interest extends to the entirety, this is sufficient (*u*): an averment that he is interested in the whole, when his interest only extends to a part, is sufficient (*x*). But where two are jointly interested, and one is stated to be interested in one count and the other in another count, this variance is fatal (*y*). The names of a firm need not be severally set forth, it is sufficiently described as the firm of *E. & Co.* The interest may have been at any time during the period of the risk; it is not necessary it should have existed when the policy was taken out (*z*). An averment of interest at the time of the policy being effected is not material, and if alleged need not be proved; it is sufficient to prove that the interest was vested during the period of the risk, and is now subsisting (*a*). A payment of money into Court precludes the defendant from objecting that the averment of interest was not substantiated (*b*).

5th. The cause of loss should be correctly stated, detailing the facts.

6th. A partial loss may be given in evidence under an allegation of a total loss. "This is an action upon the case,

(*r*) *Robinson* v. *Tobin*, 1 Stark. Rep. 336.

(*s*) *Bell* v. *Janson*, 1 M. & S. 201. 204; 2 Salk. 519; *Case* v. *Barber*, 1 Ray. 450; 1 Saund. 167.

(*t*) 2 Marsh. 687. See 2 Marsh. 686.

(*u*) But if he recover for one third, he cannot afterwards bring an action for the two thirds remaining of his interest.

(*x*) *Page* v. *Fry*, 2 Bos. & Pul. 240; 3 Esp. R. 185; but this decision is questioned. See also *Marsh* v. *Robinson*, 4 Esp. R. 98.

(*y*) *Cohen* v. *Hannam*, 5 Taunt. 101; *Bill* v. *Aneley*, 16 East, 411.

(*z*) *Wright and others* v. *Welbie*, 1 Chit. Rep. 49. Vide *Mellish* v. *Bell*, 15 East, 4.

(*a*) *Rhind* v. *Wilkinson*, 2 Taunt. 237.

(*b*) 16 East, 146.

which is a liberal action, and the plaintiff may recover less than the ground of his declaration supports, though not more" (*c*).

When an adjustment has taken place it need not be declared upon specially, but may be given in evidence as an admission upon the usual declaration, or upon an account stated (*d*).

The *venue* may be laid in any county, and cannot be changed if the cause of action arise out of the realm. But the *venue* may be changed before plea in abatement or bar, upon the usual rule (except in case the policy be under seal) upon affidavit that the cause of action arose in that other county. If material evidence arise in two counties, the *venue* may be laid in either; and if it be laid in a third county the Court will not change it. On special grounds the Court will change the *venue* in all cases (*e*).

In actions of assumpsit the *plea* of the general issue enables the defendant to avail himself of most matters of defence. But disabilities, the Statute of Limitations, a tender, bankruptcy of defendant, and sometimes, where material, the bankruptcy of the plaintiff, also "set off," must be severally pleaded specially. Also recovery under another policy will be a bar to an action respecting the insurance on the same interest (*f*).

Production of the policy, with adjustment, is not proof of payment (*g*). When the policy is by deed under seal, and the action consequently debt or covenant, there is, strictly speaking, no general issue. But a general plea is allowed by statute to some of the insurance offices.

Payment of Money into Court (*h*). Money may be paid into Court upon the whole declaration, or upon one or more of the counts contained in it. When the assured are only entitled to recover the premiums, money should be paid in on that count. A payment of money into Court generally is an admission of the policy stated in the special counts, unless the plaintiff has by his conduct induced the defendant to suppose that the question to be tried was a question of fraud (*i*). And a payment into Court is not an admission beyond the extent of the sum paid in, and the admission will be strictly

(*c*) *Gardiner* v. *Crossdale*, 2 Burr. 904; Bl. R. 198.
(*d*) Marsh. Ins. 644.
(*e*) Sid. 625.
(*f*) See Selwyn, Nisi Pr. "Assumpsit."
(*g*) *Adams* v. *Saunders*, 1 Mo. & Mal. 373.
(*h*) This is under stat. 19 Geo. II. c. 37, s. 7. See *Solomon* v. *Bewicke*, 2 Taunt. 317. But see 3 & 4. Will. IV. c. 42, s. 21.
(*i*) *Muller* v. *Hartshorn*, 3 Bos. & Pul. 556.

limited to the very objects of the policy, and the very averments in conformity with those objects contained in the declaration. Where the demand is illegal on the face of it, the payment into Court is no admission. So the payment into Court does not prevent a defence of illegality, or the Statute of Limitations (*k*).

As to Evidence.—The Courts have no power of compelling a plaintiff to consent to a consolidation rule, where the proceedings are not vexatious (*l*). Evidence for the defendant is, 1st, In proof of the contract, and the subscribing parties to, and the consideration of, the policy. 2d, The proof of interest in the thing or life insured. 3d, Existence of the thing insured at the time when the risk commenced. 4th, Compliance with warranties. 5th, Proof of loss. 6th, Competency of the witnesses.

The policy is the only evidence that the insurance was effected (*m*). The signature of the defendant subscribing the policy should be proved; though this is generally admitted. A proper stamp must have continued on the policy from the time it was executed inclusive (*n*). When the policy has been signed by an agent for the insurers, proof of his agency is required (*o*). The payment of the premiums must be proved. Parol agreements to contradict the terms of the policy will not be allowed to be given in evidence; but an agent who took out the policy may give in evidence whatever he did, said or wrote, relative to the contract, because such is proof of the contract. Indorsements as to change of residence of the insured are part of the policy (*p*).

2d. The interest or ownership of the insured in the goods or thing insured must be made out by deeds or writings, invoices and the like, and the value of the goods or amount of the interest must be made out.

3d & 4th. The existence of the thing according to the warranties at the time of the risk commencing must be clearly proved.

5th. With regard to proof of loss. The certificate of

(*k*) *Cox* v. *Parry*, 1 T. R. 464; 1 Bos. & Pul. 264; 2 Marsh. Ins. 703; *Long* v. *Greville*, 3 B. & C. 10.

(*l*) *Doyle* v. *Stewart*, 4 Nev. & M. (K. B.) 873.

(*m*) *Reculist's case*, 2 Leach, Cro. Ca. 811; *Weston* v. *Emes*, 1 Taunt. 153; *Barron* v. *Fitzgerald*, 6 Bing, N. C. 201; 8 Sc. 460.

(*n*) 35 Geo. III. c. 136, s. 2. *Rapp* v. *Allnutt*, 15 East, 601. See 3 Camp. 103. Exemption from stamp duty. Label, slip or memorandum of heads of insurance of Royal Exchange or London Assurance,. *ib.* tit. "Agreement." But in *Rex* v. *Gilson*, 1 Taunt. 25, under an insurance with the London Assurance Society, an indorsement on the policy, relative to a change in the situation of the property, being without a stamp, was not received in evidence.

(*o*) *Neal* v. *Irving*, 1 Esp. Rep. 60; *Haughton* v. *Ewbank*, 4 Camp. 88.

(*p*) 1 Taunt. 95. See *Routledge* v. *Burrell*, 1 H. Bl. 254.

burial in case of life policy; the certificate of *churchwardens* (*q*), where required by the terms of the policy in fire insurance, must be produced. Sometimes a death will be presumed where the ship in which a party sailed has not been heard of, and, from circumstances, appears to have been overtaken by a storm in which other ships perished. The loss must be proved to have happened by the means and in the manner stated in the declaration, otherwise the defendants would not know what case they have to meet.

With regard to the competency of witnesses: The general rules will prevail as to the necessity of the witness having no interest in the event of the issue, or having abandoned or released all such interest. The declaration of the wife as to her state of health was allowed as evidence in an action by the husband on a policy on her life (*r*). The plaintiff cannot recover interest upon the sum insured (*s*).

As to the evidence for the insurers: this will be to make out a case of concealment, want of interest, non-compliance with warranties, and the like. What was material to have been communicated by the insured to the insurers is a question for a jury: fraud is an inference of law from the fact of materiality, if found. Production of the policy, with memorandum of adjustment, is not proof of payment (*t*).

As to proceedings in bankruptcy: Since it is rare that a commission of bankruptcy issues against the insurers, we shall not consider that case (*u*). Under a commission issued against the insured, if the assignees sue upon a loss happening after the bankruptcy, the insurer may set off the amount of premiums due upon the policy, (see page 58.)

An action against the hundred, in case of incendiarism, may be brought by the insurers, but must be in the name of the insured (*x*), or by the insured who may be presumed to sue as trustee for the insurers if they have already satisfied his claim.

In action by the insurers against the insured, for an attempt to defraud the insurers, proof of wilful fire is full evidence of the intent to defraud (*y*).

Finally the principle of recovery back of sums paid by insurers upon improper claims (*Lefevre* v. *Boyde*) must be here again insisted on. The principle of recovery by the insurers

(*q*) *Oldham* v. *Bewicke*, 6 T. R. 722; *Routledge* v. *Burrell*, 1 H. Bl. 254; *Woosley* v. *Wood*, 2 H. Bl. 574; and 6 T. R. 110.

(*r*) *Aveson* v. *Lord Kinnaird*, 2 Sim. & Stu. 606, *S. C.*

(*s*) *Higgins* v. *Sargent*, 2 B. & C. 248; *Bushman* v. *Morgan*, 5 Sim. 635.

(*t*) *Adams* v. *Sanders*, 1 Mo. & Mal. 373.

(*u*) Where the insurer is only a trustee, his bankruptcy is not in practice made an objection to his being named plaintiff in the action, *Duckett* v. *Williams*, *ante*; and see before, p. 62.

(*x*) 3 Dougl. 61; *Mason* v. *Sainsbury*, 2 Marsh. Ins. 796, 3rd edition.

(*y*) See *ante*, Cap. VI.

is not restricted to the case of fraudulent claims as is sometimes supposed. If a claim be settled, by the insurers paying the amount under circumstances of mistake, mistake of *facts* not of the *law*, which mistake could only have been prevented by the disclosure, at the time of settling the claim, of facts which were not disclosed, whether by fraud or in ignorance on the part of the insured or of any other persons with whom knowledge of the fact rested, from this state of circumstances will result a rule that the amount paid for such claim shall be recovered by the insurers (*z*). It would be hard, indeed, were the rule otherwise. The courts of law will set aside the penalty of a bond, and look at the bond as an agreement, with a view to discover what was the consideration for the stipulation of payment, and will measure according to the consideration the amount due on such bond; in other words, will ascertain the damages incurred by the breach of the condition, and alter the amount of the penal sum accordingly (*a*). But as to the notion that the parties to a contract cannot be put in the situation they intended to be placed because the money has been paid, this rests on no authority, and, as it appears, bears but lightly upon reason. Payment of purchase money is not the execution of the contract as between vendor and purchaser of land; the purchase money may be still recovered in case of failure of consideration by reason of incumbrances on the estate, &c. Again, it is not every failure of consideration which will occasion a return of the purchase money. If the house be destroyed by fire or tempest, or the life drop, in the respective cases of purchase of a house or of a life estate, the purchase money is absolutely due, must be paid, and cannot be recovered. There the failure of consideration does not arise from any act or omission of the parties. The rule as to the insurer lies between the foregoing points. So that where the consideration fails not by accident nor by the act or omission of the insurer, he is entitled to restitution. But he has paid the claim: but payment is not the execution or close of every contract; and failure of the consideration is a good ground for the action of assumpsit, and that this *assumpsit* applies to insurance we have just quoted authorities.

The points of practice in this chapter are sometimes modified by the recent "*Companies Clauses Consolidation Act*," alluded to in the preceding chapter.

(*z*) *Forrester* v. *Pigou*, 3 Camp. 380; *Chatfield* v. *Paxton*, 2 East, 471; see 5 Taunt. 155; Marsh (Insurance, 2 p. 740) is of opinion that the money ought to be recovered, though it had been paid to the insured under process of law; but this authority only goes to the case of a fraud; *Kelly* v. *Solari*, is a case of recovery or payment by mistake on a lapsed policy; decided in Exch. Pl. Nov. 18th, 1841; *Marriot* v. *Hampton*, 7 T. R. 269.

(*a*) See *Evans'* Statutes; Notes on 8 & 9 Will. III. c. 11.

PART IV.

TABLES AND RULES RELATING TO ASSURANCE.

THIS part requires a few introductory remarks; in the first place, to suggest the necessity of such an Appendix, as the inquiries of readers in this department of the law, it is presumed, do not in practice stop at the results of cases on the reports, but are led into the terms of the prospectuses and plans of the various Offices of Assurances. As addressed to this class of the profession, these introductory remarks are intended to exhibit, in conjunction with the Tables, a line of justice and convenience as taken by the majority of the Assurance Offices between the theory of minimum charges and the practical end of deposits made for securing this species of reversionary benefit. The late Mr. Babbage led the way in advocating the lowest scale of deposits for assurance; in this he has been followed by others, and for the extensive dissemination of their valuable "Information," the Messrs. Chambers must appear in the foreground as deprecating the general system of the high rate founded on the Northampton tables of mortality, which, as will appear by the comparative statement in the note (*a*), are at least one third beyond the actual decrement

(*a*) EXPECTATION OF LIFE AT RATES AS BELOW.

Age.	Northampton.	Des Parcieux and Carlisle.	Sweden.	G. Davies, Equitable.	Milne Government.
30	28.27	34.34	31.21	34.33	35.37
40	23.03	27.61	24.66	27.40	29.07

MORTALITY PER CENT. FOURTH REPORT REGISTRAR GENERAL.

Age.	Northampton.	Sweden.	Carlisle.	All England.	Metropolis.	Manchester.
40	1.772	1.059	1.220	1.148	1.399	1.634
All ages	4.055	2.5	2.89	2.227	2.67	3.43

of life on the average of England and Wales. With motives freely ascribed to assurers for the adoption of the Northampton scale, the reader may consider he has less to do than with the results of the practice. But it may be observed that many of the offices adopt this high rate, with the alternative of a lower charge without a right of sharing in surplus profits (*b*); this latter rate will be found to bring the offices in question generally on a par with any that suggest in their prospectuses the very low figure of their "premiums." In conclusion, the reader must consult the foot notes as well as the tabular figures, nor be satisfied here, but minutely inquire into the reports of proceedings and characters of establishments.

As to the result of the high rate in conjunction with a bonus or share of profit, it will be found that, in the first place, the bonus on an average, *i. e.* on a policy of 40 years' duration, reaches half the amount insured; and secondly, as a consequence, that the premium nominally charged on the less sums, is in reality parcelled out as two thirds upon the sums specified in the policy as "assured," and one third bearing on the addition; in other words, that the premium calculated upon, or apportionable to the net sum insured, is actually only two thirds of that charge, or is in effect levied on the scale of the most recent data afforded by the census and report of the Registrar-General (*c*). Nor is this all; the spirit or intention of a deposit in the nature of assurance, is to secure a reversionary benefit generally in furtherance of family obligations, (in other cases the assured may resort to the lower scale of premiums, divested of the benefit of share profits,) and in this view the bonus gives that future result of present savings; it also secures the advantage of a large deposit, at present according to actual circumstances of the depositor, with the condition of either diminishing the deposits, or discontinuing them at a later date if altered views or circumstances require a change, for which arrangement the bonus or share of profits accrued on the interval is generally accepted or allowed by the office in discharge of the account of future premiums, or part thereof

(*b*) In the Companion to the British Almanack for 1846, may be seen a list of 54 Life Assurance Offices, giving this alternative of a lower rate, without profits, and a table of the premiums actually charged; these average something more than two thirds of the higher rate, and are rather less advantageous than the full premium and prospective bonus.

(*c*) See (preceding page) note. Mortality, Northampton rate 4. Registrar's report for all England, giving about 2.3, the two rates compared are as 4 to 2.3, or as 2 : 1.15. This is the rate for all ages, at 40 it is as 1.7 : 1.1; the ratio of full sum paid on claim is as 1.5 : 1.0; upon the sum originally insured, as may be seen in the best drawn statements of the experience of an established office in this particular, or as given in our table of amounts of bonuses.

as the case may be (*d*). These considerations which are not here set forth for the first time, but may be familiar to the reader, will perhaps dispose of the case of the alternative of a Northampton or "Government" scale of mortality. This subject involves, however, a question of great importance to be brought forward immediately. The foregoing remarks must be closed with this caution to the reader and his clients, *viz.:* an assurance office being in the nature of a bank of deposits, but under the peculiar circumstances of the demand of the deposit being a remote reversion, the public leave a long interval for mal-practices on the part of the assurers, whom they should distrust in proportion as they find those liberal in preliminary expenses and in their staff or establishment, and profuse in promises. A respectable manager, both as to his property, his standing, his capacity, or acquaintance with the business, and (where there is no proprietary body) the efficiency of the auditing or comptrolling body, and the freedom of access of the public or the assured by frequent public meetings or other means; the respectability too of the cashier, and some efficient control or check, and (at short intervals) periodical revise of the banking account, are essentials not always secured by a display of names, as of directors of a weekly board. In all cases of actual business, the executive must be in few hands; a multiplicity of directors is only a screen for abuses of greater or less magnitude: in the essential particulars above referred to, control or check is necessary, and the deed of constitution should be carefully inspected, to see that the case is provided for. This done, a larger staff is fertile in expense, which at the outset may be of ruinous consequence; and in a more mature establishment is only calculated to encumber on the one hand an efficient management, on the other to keep the public or depositors from attending to their concerns.

But coupling the fact of the failure of between thirty and forty insurance offices of the present century with the recent increase of these companies, it would be perhaps adviseable to borrow a measure of public policy applied to their prototype, the *East India Company*, and to have a government board of control for all joint-stock companies. In case of such an interference by the government, the comptroller should inspect at periods, decreasing in frequency with the age of the establishment, of from two to seven or ten years.

(*d*) The prospectuses of the various offices will best inform the reader as to their particular rules, or practice in this respect; in some it is made imperative to decide at the commencement of the insurance, whether the bonus shall be paid in one way or another. The "Provident" paid off the present value of their bonuses in 1844, to all who chose to accept it in advance.

Such inspection properly conducted would preclude the necessity of many special meetings of shareholders having private or petty views, and might ensure the durability of the company and the interests of all.

It remains to observe, that in all the banks of deposit, it is a matter of first importance to know what proportion of the profits is to accrue to the public, and what is reserved to shareholders or proprietors. Another question is, whether the public (depositors or assured) are admitted equally in relation to each other to a participation of profits. The "Equitable" (*e*) adopted a peculiar mode of division, which makes it necessary to append a specific table, giving the value of their policies at various dates. A table of bonuses is also constructed here upon data supplied from the prospectuses of the various offices, which have been collected with a similar object, in the excellent and comprehensive work of Mr. Jones (*f*). It is hoped that the comparison of realized averages thus obtained, will have some result with the reader, who will perhaps see that the advisable practice of selection will be as to old offices, to apply to such as have realized the largest returns to average policy-holders; and if a new office be adopted, to choose not one which promises highest profits, but which with premiums at two-thirds of the higher or full rate, has least of the loan and loose accommodation system about it.

(*e*) The "Rock" follows the "Equitable" in giving a share proportionably larger for older policies at each period of division; thus, in effect, elder depositors are considered as proprietors, or a class distinct from younger policy-holders. The "Amicable" and "London" have also class-sharers, or elder policies with disproportionate benefits.

(*f*) Among these abstracts of prospectuses, several, as the "Alfred," "National Loan," "North of Scotland," "Protector," and others, show arrangements for converting the assurance into an endowment, at the age of 60; this is unobjectionable, as also the *descending* scale of premiums: but *one* good feature is not a full recommendation as to character.

PRESENT VALUE
At 3 per Cent.

Age	(1.) Annuity £1.	(2.) Reversion £1.	Reversionary Annuity of £1.
14	19·87	·3920	
15	·657	·3983	
16	·435	·4041	
17	·210	·4111	
18	·01	·4170	
19	18·82	·4226	
20	·659	·4280	
1	·47	·4329	
2	·31	·4375	
3	·148	·4422	
4	17·98	·4470	
5	·814	·4526	
6	·64	·4570	
7	·467	·4621	
8	·289	·4673	
9	·107	·4726	
30	16·92	·4780	
1	·73	·4835	
2	·54	·4891	
3	·34	·4948	
4	·14	·5007	
5	15·93	·5066	
6	·729	·5127	
7	·515	·5189	
8	·298	·5253	
9	·075	·5317	
40	14·848	·5384	
1	·62	·5450	
2	·32	·5517	
3	·16	·5583	
4	13·929	·5651	
5	·69	·5720	
6	·45	·5791	
7	·20	·5863	
8	12·95	·5936	
9	·69	·6011	
50	·436	·6086	
1	·18	·6160	
2	11·93	·62339	
3	·67	·63085	
4	·414	·6384	
5	·15	·6461	
6	10·88	·6539	
7	·61	·6618	
8	·337	·6698	
9	·053	·6779	
60	9·777	·6860	
1	·493	·6943	
2	·205	·7027	
3	8·91	·7113	
4	·611	·72005	
5	·30	·72899	
6	7·99	·7380	
7	·63	·7471	
8	·367	·75629	
9	·05	·7655	
70	6·75	·7747	
1	·41	·7839	
2	·10	·79309	
3	5·79	·8020	
4	·49	·8109	
5	·199	·8194	
6	4·925	·8274	
7	·65	·8353	
8	·37	·8435	
9	·077	·8521	
80	3·78	·8607	
1	·499	·8689	
2	·229	·8768	
3	2·98	·8840	
4	·79		
5	·62		
6	·46		

To find the value of a perpetual Rent Charge of £1. per annum after a Life in possession of a given age, deduct the value given on the first column from £33. the perpetuity at 3 per cent.

The value of an Annuity for a given Life after a Life in possession of a given Age. Rule—From the Annuity for the proposed Life, deduct Annuity for the joint Lives.

Annual Prems. for Assurance of £1.
Divide the figure opposite the given age in the Table No. 2 by the corresponding figure (increased by unity) in Table 1. See also Table of Premiums of the Provident Life Office, p. 74.

PRESENT VALUE OF ANNUITY,
£1. for two Joint Lives.

Elder	Younger 15	25	35	45	55
15	15·22				
20	14·66				
25	14·23	13·387			
30	13·73	12·966			
35	13·15	12·463	11·723		
40	12·46	11·854	11·213		
45	11·69	11·164	10·622	9·776	
50	10·798	10·356	9·912	9·204	
55	9·850	9·484	8·557	7·681	
60	8·790	8·495	8·227	7·781	7·09
65	7·566	7·370	7·177	6·850	6·33
70	6·264	6·099	5·911	5·749	5·39
75	4·911	4·799	4·719	4·580	4·35
80	3·621	3·550	3·505	3·426	3·29

To convert Annuity (Table 1) from 3 per Cent. to 5 per Cent. Multiply by

Age	
20	·7513
25	·7614
30	·7725
35	·7847
40	7973
45	8108
50	8268
55	8413
60	8588
65	8724
70	8950
75	9105
80	9255***

*** Proportionally for intermediate ages.

*** Observe that all the Tables here given, are calculated on the Northampton (the usual) Rate, which proves to be one third at least too high. As to adjustments of the difference by way of "Bonus," Endowment, or Allowance, see the Introductory Remarks to these Tables and the Table of comparative Bonuses, here following.

ANNUAL PREMIUM OF ASSURANCE on the Dropping of One of Three Joint Lives.*

		10			15			20			25			30			35			40			45			50			55			60		
		L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.
10	10	3	17	0																													
	15	4	0	6																													
	20	4	6	9																													
	25	4	11	0																													
	30	4	15	5																													
	35	5	0	3																													
	40	5	3	6																													
	45	5	11	10																													
	50	6	3	0																													
	55	6	16	8																													
	60	7	9	6																													
15	15	4	4	1	4	7	6																										
	20	4	8	0	4	11	6																										
	25	4	11	6	4	16	0																										
	30	4	15	5	4	19	5																										
	35	5	0	5	5	4	5																										
	40	5	6	9	5	11	3																										
	45	5	15	0	6	0	0																										
	50	6	6	6	6	10	6																										
	55	7	0	2	7	6	0																										
	60	7	19	6	8	7	0																										
20	20	4	13	11	4	16	0	5	0	0																							
	25	4	15	11	4	19	5	5	3	6																							
	30	4	19	9	5	3	6	5	7	3																							
	35	5	16	3	5	9	3	5	13	0																							
	40	5	10	10	5	14	6	5	18	4																							
	45	6	0	0	6	5	0	6	7	2																							
	50	6	10	8	6	14	1	6	18	2																							
	55	7	7	9	7	11	6	7	13	6																							
	60	8	6	9	8	11	5	8	14	6																							
25	25	4	17	11	5	2	9	5	6	0	5	8	6																				
	30	5	5	10	5	7	6	5	10	0	5	12	8																				
	35	5	7	10	5	11	3	5	15	4	5	17	6																				
	40	5	13	0	5	17	3	6	1	6	6	4	6																				
	45	6	2	8	6	6	1	6	10	2	6	12	6																				
	50	6	15	0	6	18	0	6	18	2	7	2	6																				
	55	7	6	9	7	12	0	7	16	6	7	18	6																				
	60	8	12	9	8	13	0	8	17	0	8	19	5																				
30	30	5	6	6	5	9	6	5	13	0	5	15	10	6	14	0																	
	35	5	9	6	5	14	3	5	18	4	5	19	0	6	4	0																	
	40	5	17	0	6	0	0	6	4	6	6	8	10	6	17	6																	
	45	6	6	8	6	10	1	6	14	6	6	16	6	6	19	0																	
	50	6	19	7	7	2	0	7	6	2	7	8	6	7	11	0																	
	55	7	15	9	7	18	0	8	2	2	8	4	4	8	7	0																	
	60	8	13	0	8	16	0	9	1	9	9	3	9	9	11	2																	
35	35	5	16	10	6	0	3	6	4	4	6	6	6	6	11	6	6	14	0														
	40	6	2	8	6	6	1	6	10	2	6	11	6	6	15	5	6	19	2														
	45	6	12	8	6	14	0	6	18	2	7	0	6	7	3	5	7	7	6														
	50	7	3	9	7	6	0	7	10	2	7	12	0	7	15	0	7	18	6														
	55	7	19	9	8	1	0	8	6	2	8	6	6	8	7	0	8	14	6														
	60	8	15	0	8	18	0	9	1	6	9	3	9	9	6	6	9	10	6														
40	40	6	5	0	6	10	0	6	14	2	6	17	6	6	19	6	7	3	6	7	8	0											
	45	6	17	6	6	18	6	7	0	0	7	5	6	7	7	6	7	11	6	7	16	0											
	50	7	5	9	7	9	6	7	12	2	7	16	6	7	18	0	8	4	6	8	6	6											
	55	8	2	6	8	5	6	8	8	5	8	10	6	8	13	0	8	14	6	8	15	6											
	60	9	0	6	9	2	5	9	5	0	9	9	6	9	12	6	9	15	0	9	18	6											
45	45	7	3	6	7	6	0	7	10	2	7	12	5	7	15	0	7	18	6	8	6	4	8	9	6								
	50	7	15	9	7	19	6	8	2	0	8	4	6	8	7	6	8	10	6	9	0	6	9	1	6								
	55	8	9	9	8	12	6	8	14	2	8	17	6	8	19	0	9	2	0	9	12	0	9	14	6								
	60	9	4	8	9	6	6	9	10	9	9	13	0	9	15	6	9	18	0	10	8	0	10	9	6								
50	50	8	5	8	8	10	6	8	14	2	8	17	6	8	19	0	9	2	0	9	12	0	9	13	6	10	1	0					
	55	9	0	0	9	4	6	9	4	9	9	7	6	9	9	0	9	14	0	10	1	1	10	2	6	10	10	0					
	60	9	10	0	9	19	6	10	2	6	10	4	6	10	8	0	10	6	0	10	17	6	10	19	6	11	5	0					
55	55	9	6	3	9	9	5	9	13	9	9	15	9	9	18	1	10	1	2	10	5	6	10	11	0	10	18	10	11	5	0		
	60	10	0	0	10	2	0	10	6	6	10	12	0	10	16	0	10	18	6	11	0	5	11	7	0	11	8	6	12	14	6		
60	60	10	8	0	10	15	6	10	16	0	11	3	6	11	4	10	11	8	6	11	10	5	11	17	6	12	1	6	13	0	6	13	13	6
	67	11	0	0	11	11	6	11	18	0	12	6	0	12	8	0	12	11	6	12	12	6	13	10	0	14	0	6	14	4	6	14	14	6

* To calculate this table the author applied to Mr. Jones's Table for Two Lives, and expresses his obligations.

PER ACT 10 GEO. IV. c. 24.

TABLE showing the ANNUITY granted by Government for each £100, to continue during the Life of any Person, according to the following Ages.

Age of the Nominee.	Male.			Female.			Age of the Nominee.	Male.			Female.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
15	4	13	0	4	6	11	48	6	15	11	5	19	7
16	4	14	0	4	7	6	49	6	19	2	6	1	9
17	4	14	11	4	8	0	50	7	2	8	6	4	1
18	4	15	10	4	8	7	51	7	6	4	6	6	8
19	4	16	8	4	9	1	52	7	10	1	6	9	4
20	4	17	5	4	9	7	53	7	14	0	6	12	4
21	4	18	1	4	10	2	54	7	17	11	6	15	5
22	4	18	7	4	10	9	55	8	2	1	6	18	10
23	4	19	1	4	11	4	56	8	6	4	7	2	4
24	4	19	7	4	12	0	57	8	10	8	7	6	2
25	5	0	2	4	12	8	58	9	15	4	7	10	3
26	5	0	9	4	13	4	59	9	0	3	7	14	7
27	5	1	6	4	14	1	60	9	5	6	7	19	2
28	5	2	3	4	14	10	61	9	11	5	8	4	3
29	5	3	1	4	15	8	62	9	17	11	8	9	9
30	5	4	0	4	16	6	63	10	5	1	8	15	8
31	5	5	0	4	17	4	64	10	12	9	9	2	0
32	5	6	0	4	18	3	65	11	1	0	9	8	9
33	5	7	1	4	19	2	66	11	9	10	9	16	1
34	5	8	3	5	0	2	67	11	18	10	10	3	11
35	5	9	6	5	1	2	68	12	8	4	10	12	4
36	5	10	11	5	2	2	69	12	18	6	11	1	7
37	5	12	4	5	3	2	70	13	9	4	11	11	6
38	5	13	10	5	4	3	71	14	0	8	12	1	11
39	5	15	4	5	5	5	72	14	12	9	12	13	2
40	5	17	0	5	6	8	73	15	6	0	13	5	2
41	5	18	10	5	7	11	74	16	1	0	13	17	10
42	6	0	9	5	9	4	75	16	18	0	14	11	3
43	6	2	9	5	10	9	76	17	17	6	15	6	3
44	6	5	0	5	12	3	77	19	2	3	16	1	9
45	6	7	5	5	13	11	78	20	10	5	16	17	6
46	6	10	0	5	15	8	79	22	1	5	17	13	5
47	6	12	10	5	17	7	80 & upwards.	23	16	6	18	9	7

These Tables are liable to a slight variation dependent upon the price of the Funds.

Payments to be made until 50, to receive Annually £1, from 60 until Death, at 3 per Cent.			Annual Payments to be made until 60, to receive thence Annually £1, until Death, at 3 per Cent.	
Age.	Present Value, or Payment in one Sum.	Annual Payment, or Premium.	Age.	
18	1·094	·1021	18	·0771
19	1·140	·1074	19	·084
20	1·191	·1131	20	·0910
21	1·244	·1209	21	·0959
22	1·302	·1276	22	·1026
23	1·359	·1351	23	·1101
24	1·422	·1434	24	·1184
25	1·481	·1525	25	·1295
26	1·557	·1624	26	·1474
27	1·629	·1733	27	·1683
28	1·666	·1809	28	·1859
29	1·787	·1978	29	·2236
30	1·872	·2125	30	·2365
31	1·962	·2285	31	·2508
32	2·055	·2461	32	·2659
33	2·156	·2662	33	·2826
34	2·264	·2889	34	·3010
35	2·370	·3132	35	·3196
36	2·549	·3505	36	·3522
37	2·614	·3755	37	·3645
38	2·747	·4135	38	·3902
39	2·887	·4587	39	·4310
40	3·035	·4938	40	·4497
41	3·194	·5538	41	·4773
42	3·360	·6267	42	·5229
43	3·542	·7190	43	·5671
44	3·734	·9649	44	·6170
45	3·939	·9900	45	·6738
46	4·156	1·201	46	·7381
47	4·387	1·515	47	·8145
48	4·635	2·018	48	·9000
49	4·901	2·961	49	1·046
50	5·188	5·188	50	1·128
			51	1·201
			52	1·377
			53	1·661
			54	1·900
			55	2·291
			56	2·880
			57	3·392
			58	5·000
			59	6·259
			60	

*** The Tables on this page as well as all of this series, are calculated on the Northampton scale of duration of life: but if the class of contributors are equal to those having the average expectation of life, these figures may be too high, or adopting them, a profit may be expected, divisible among the contributors in the manner of a bonus added to policies. See Introductory Remarks.

Such bonus may be in the case of Friendly Societies, a Sickness Fund for which the following Table may serve: it is given in Chambers's "Information," ii. p. 309; other rates are given by Dr. Price.

Ages.	Highland society.	English Benefit Societies.
	per cent.	
20—30	1·14	1·54
30—40	1·32	1·83
40—50	1·97	2·56
50—60	3·60	4·32

From these two Tables two mean Rates, or a Rate for the mean age of 40 are severally 2 and 2½ per Cent. If the Bonus be found sufficient for further objects, a portion might be funded or set to the contributor's credit as for an "Assurance on Death."

PREMIUMS for insuring the sum of £100 upon the Life of any healthy Person from the age of Eight to Sixty Seven-Years.

AGE.	For One Year.	Seven Years at an Annual payment of	WITH BONUS. For the whole Life, at an Annual Payment of	WITHOUT BONUS. For the whole Life, at an Annual Payment of
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
8 to 14	0 17 9	1 1 5	1 17 7	1 10 1
15	0 17 11	1 2 11	1 18 7	1 10 10
16	0 19 2	1 4 7	1 19 8	1 11 6
17	1 1 2	1 6 1	2 0 8	1 12 6
18	1 3 3	1 7 5	2 1 8	1 13 4
19	1 5 0	1 8 6	2 2 8	1 14 2
20	1 7 3	1 9 5	2 3 7	1 14 10
21	1 8 10	1 10 1	2 4 6	1 15 6
22	1 9 3	1 10 6	2 5 4	1 16 3
23	1 9 8	1 11 0	2 6 3	1 17 0
24	1 10 2	1 11 6	2 7 1	1 17 8
25	1 10 7	1 12 1	2 8 1	1 18 6
26	1 11 1	1 12 7	2 9 1	1 19 3
27	1 11 7	1 13 2	2 10 1	2 0 2
28	1 12 1	1 13 9	2 11 1	2 0 11
29	1 12 8	1 14 4	2 12 3	2 1 10
30	1 13 3	1 14 11	2 13 5	2 2 9
31	1 13 9	1 15 7	2 14 7	2 3 7
32	1 14 4	1 16 3	2 15 9	2 4 8
33	1 15 0	1 16 10	2 17 1	2 5 7
34	1 15 8	1 17 8	2 18 5	2 6 9
35	1 16 4	1 18 10	2 19 10	2 8 0
36	1 17 0	1 19 7	3 1 4	2 9 1
37	1 17 9	2 0 8	3 2 10	2 10 3
38	1 18 6	2 1 9	3 4 6	2 11 6
39	1 19 3	2 2 11	3 6 2	2 13 10
40	2 0 8	2 4 1	3 7 11	2 14 5
41	2 2 0	2 5 4	3 9 9	2 15 9
42	2 3 6	2 6 6	3 11 8	2 17 4
43	2 4 6	2 7 9	3 13 8	2 19 0
44	2 5 6	2 9 2	3 15 9	3 0 7
45	2 6 8	2 10 10	3 17 11	3 2 5
46	2 7 10	2 12 6	4 0 2	3 5 6
47	2 9 0	2 14 4	4 2 7	3 8 9
48	2 10 3	2 16 4	4 5 1	3 12 0
49	2 12 3	2 18 6	4 7 10	3 14 8
50	2 15 1	3 0 8	4 10 8	3 17 0
51	2 17 4	3 2 8	4 13 6	3 19 6
52	2 19 1	3 4 9	4 16 5	4 2 5
53	3 1 0	3 7 0	4 19 7	4 5 0
54	3 3 0	3 9 5	5 2 10	4 7 8
55	3 5 0	3 12 0	5 6 4	4 10 4
56	3 7 3	3 14 8	5 10 1	4 17 2
57	3 9 8	3 17 6	5 14 0	5 4 5
58	3 12 3	4 0 6	5 18 2	5 11 9
59	3 15 1	4 3 8	6 2 8	5 19 6
60	3 18 1	4 7 1	.....	6 7 4
61	4 1 5	4 10 11	.....	6 12 4
62	4 3 11	4 15 0	.....	6 17 9
63	4 7 8	4 19 8	.....	7 3 7
64	4 10 9	5 4 10	.....	7 9 10
65	4 15 2	5 10 10	.....	7 16 9
66	5 0 1	5 17 7	.....	8 4 1
67	5 5 6	6 5 2	.....	8 12 1

The comparative rates given in tabular form in the Companion to the British Almanack for 1846, in a list of between fifty and sixty offices, gives the following result:—Between the highest and lowest on the list of premiums without profits, the difference for age 40 is 10*s.* from £3 3*s.* 7*d.*, and between the highest and lowest on the list of premiums with profits, the difference is 9*s.* from £3 8*s.* about one-sixth in each case. The table of premiums in this page gives the lowest scale of premiums on the first list, and nearly the highest on the second list; but these scales must be taken together with those of bonuses in the following pages.

TABLE showing various plans and proportions of dividing Profits to Depositors charged a high rate of Premium, or a rate promising surplus profits. List made up to 1841.

NAME OF OFFICE.	1 Date of Establishment.	2 Proportion of Bonus to total of Profits made by the Office.	3 Period of dividing in Years.	4 Number of Bonuses actually declared.
Albion	1805	..	3	..
Alfred	1839	four-fifths	5	..
Alliance	1824	..	5	..
Amicable	1706	all *	..	..
Atlas	1808	..	7	4
Australasian	1840	half	5	..
Britannia	..*	..	1	..
British Commercial	1820	..	7	..
British Empire	1839	all	5	..
Caledonian	1841	two-thirds	7 after 1850	..
Church of England	1840	four-fifths	7	..
City of Glasgow	1840	all	1 after 1846	..
Clergy Mutual	1829	all	5	..
Clerical, Medical, &c.	1825	..	5	..
Crown	1824	two-thirds	7	..
Dissenters' and Genera	..	..	5	..
Eagle	1807	four-fifths	7	..
Economic	1823	three-fourths	5	3
Edinburgh	1823	four-fifths	7	..
English and Scotch Law	1839	two-thirds	7	..
Equitable	1762	all *	..	..
European	1819	..	7	..
Family Endowment	1835	four-fifths	1 after 1845	..
Farmers'	1840	four-fifths †	..	..
Freemasons'	1839	nine-tenths †	..	..
Guardian	1821	half	7	..
Hand-in-Hand	1836	all	1 after 1842	..
Hope	1807	Office closed	..	..
Imperial	1820	two-thirds	5	..
Law Life	1823	four-fifths	7	..
Legal and General	1836	four-fifths	7 after 1846	..
Licensed Victuallers'	1836	two-thirds	5	..
London, Edinburgh, and Dublin	1840	all	1	..
London and Westminster	1839	all	1	..
London Assurance	1721	two-thirds*	1 from 1836	..
London Life	1806	all	7	..
Medical and Invalid	1841	two-thirds	..	..
Metropolitan	1835	..	1 aft. 5pm. pd.	..
Minerva	1836	four-fifths	5	..
Mutual	1834	all	1	..
National	1830	..	1 aft. 5pm. pd.	..
National Loan	1837	two-thirds	1 aft. 5pm. pd.	..
National Mercantile	1837	..	..	..
National Provident	1835	all	5	..
Norwich Union	1808	all	7	3
North British	1809	two-thirds	7	..
North Scotland	1836	three-tenths	7	..
Palladium	1797	four-fifths	7	2
Pelican	1797	half	7 from 1840	..
Promoter	1826	three-fourths	5	..
Protector	1833	three-fourths	5	..
Protestant Dissenters'	1839	..	..	..
Provident	1806	all ‡	7	5
Provident Clerks'	1841	two-thirds †	5	..
Reliance	1841	all	3	..
Rock	1807	two-thirds	7 *	4
Royal Exchange	1722	two-thirds	7 from 1842	..
Royal Naval, Military, and East Indian	1838	four-fifths	5	..
Scottish Amicable	1826	all	..	..
Scottish Union	1824	two-thirds	5	..
Scottish Widows'	1815	all	7	..
Standard	..	..	5	..
Sun	1810	half	from 1837	..
United Kingdom	1834	two-thirds	..	1
Union	1714	..	7	..
Universal	1834	three-fourths	5	..
University	1825	nine-tenths	5	..
Victoria	1838	half	7	..
West of England	1807	..	5	..
Westminster Society	1792	5 per cent. after 5 years & 1 per cent. yearly after.	..	..
Westminster and General	1839	four-fifths	5	..
York and North England	1834	..	..	..

Where no figure, the period and proportion have not been declared, or are not known to the writer.

In using this table look to column 4, together with 3, since the average duration of life from the Age Policies are generally taken out, gives an office an average duration of from 20 to 25 years from its commencement FREE FROM CLAIMS, or for that term all their business is profit.

* These four offices have a peculiar division.

† A portion of the reserve is set apart for purposes of benevolence.

‡ Except a proportionate bonus on the Proprietary Fund of £25,000.

AMOUNT OF BONUSES in VARIOUS OFFICES that have Survived the TRIAL-PERIOD of from 20 to 25 YEARS from the DATE of their ESTABLISHMENT.

Date of Establishment of Office.	NAME OF OFFICE.	Sum Insured.	No. or Date of Policy.	Age.	Premium.	Number of Bonuses, or Date of Declaring.	Total of Bonuses.	Present Value of Bonuses.	Per Cent. on Premium.	Per Cent. on Sum Insured.
		£			£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s.
1824	Alliance . . .	. .	. .	. .	. .	In 1829	. .	. .	20 0 0	
	Amicable, see p. 79 note.									
1808	Atlas	. .	1816	25	24 0 10	3 1837	338 0 0	153 0 0	67 0 0	
				30	26 14 2	. .	354 0 0	169 2 0	63 0 0	
				35	29 18 4	. .	379 0 0	192 0 0	60 0 0	
				40	33 19 2	. .	416 0 0	224 0 0	58 0 0	
				45	38 19 2	. .	461 0 0	263 14 0	56 0 0	
				50	45 6 8	. .	526 0 0	319 18 0	55 0 0	
				55	53 3 4	. .	626 0 0	404 10 0	56 0 0	
				60	63 13 4	. .	789 0 0	514 8 0	59 0 0*	
						Another Bonus in 1844.				
1820	British Commercial .	. .	. .	. .	. .	1835	. .	. .	26 7 10	
1825	Clerical, Medical .	. .	. .	. .	. .	1832	. .	. .	33 3 0	
1823	Economic‡ . . .	. .	. .	. .	. .	1844	. .	. .	86 0 0*	
1823	Edinburgh . . .	. .	. .	. .	. .	1835	. .	. .	20 to 38	
1807	Eagle	See statement of Provident.							* *i. e.* "the declared value," the present value is between 30 and 40.	

‡ This is taken from their Advertisement, Feb. 18, 1846. This per centage of course does not refer to the present value of the Bonus.

1819	European* . . .											
1821	Guardian* . . .											
1820	Imperial . . .	1,000	. .	20	21 19 10	1831	150 0 0	47 17 10	. .	4 14
				30	20 14 2	. .	150 0 0	58 0 10	. .	5 16
				33	33 19 2	. .	150 0 0	71 10 11	. .	7 0
				45	45 6 8	. .	150 0 0	86 4 9	. .	8 12
				63	63 13 4	. .	150 0 0	102 17 8	. .	10 0
1823	Law Life* . . .	1,000	. .	20	†	1840	316 0 0	135 6 0	. .	13 10
	* The date, 1840, sum, 1,000*l.*, the Ages and Total of Bonuses are the only figures in the published statement from which the estimate is made.			25	. .	. .	325 0 0	147 2 0	. .	14 14
				30	. .	. .	338 0 0	161 12 0	. .	16 2
				35	. .	. .	359 0 0	181 18 0	. .	18 2
				40	. .	. .	391 0 0	210 0 0	. .	21 0
				45	. .	. .	431 0 0	246 10 0	. .	24 12
				50	. .	. .	483 0 0	293 18 0	. .	29 8
				55	. .	. .	553 0 0	357 6 0	. .	35 14
				60	. .	. .	681 0 0	467 18 0	. .	46 16
				65	. .	. .	885 0 0	659 4 0	. .	65 18
1808	Norwich Union . .	1,000	No. 7	. .	37 15 0	3	337 13 0		. .	37 0
		2,000	380	. .	51 1 8	. .	511 3 0		. .	25 0
		1,000	477	. .	62 0 0	. .	577 16 0	*Quære*, the	. .	57 0*
		1,000	1,259	. .	74 18 4	. .	594 13 0	three first		* Extra,
		2,000	. .	. .	88 13 4	. .	703 16 0	seem, from		see Pre-
		2,000	. .	. .	75 10 0	. .	547 5 0	the numbers		mium.
		3,000	. .	. .	117 0 0	. .	848 5 0	of the Poli-		
		2,000	. .	. .	110 0 0	. .	797 17 0	cies, to be		
		2,500	. .	. .	81 9 9	. .	534 2 0	of nearly 40		
		3,000	. .	. .	108 0 0	. .	708 9 0	years' date.		
		3,000	. .	. .	132 10 0	. .	777 13 0			
		4,999	3,589	. .	323 2 6	. .	514 0 0			
1809	North British . .	. .	. .	. .	. .	1838	. .	. .	. .	1 5

* Statements not come to my hand.

† This column not being filled, it does not appear whether the Bonus bear on an ordinary or extra Premium.

TABLE OF BONUSES—*continued.*

Date of Establishment of Office.	NAME OF OFFICE.	Sum Insured.	No. or Date of Policy.	Age.	Premium	Number of Bonuses, or Date of Declaring.	Total of Bonuses.	Present Value of Bonuses.	Per Cent. on Premium.	Per Cent. on Sum Insured.
		£			£ s. d.		£ s. d.	£ s. d.		£ s.
1797	Palladium . . (Judging from the premiums, this is the sum.)	10,000	. .	10	281 0 10	2	516 6 1	160 0 0	. .	Sum not stated, but the per Centage appears to be 1*l.* 12*s*
		. .	. .	15	338 19 2	. .	681 2 7	271 1 0		
		. .	. .	20	414 11 8	. .	768 5 1	328 7 0		
		. .	. .	25	424 15 10	. .	787 2 8	356 3 0		
		. .	. .	30	433 15 0	. .	813 15 6	388 2 0		
		. .	. .	35	447 10 0	. .	856 6 5	432 7 0		
		. .	. .	40	477 18 0	. .	923 18 1	496 9 0		
		. .	. .	45	502 10 0	. .	1,011 2 9	577 5 0		
		. .	. .	50	571 5 0	. .	1,129 15 7	687 3 0 nearly *		
1806	Provident . . .	2,500	109	37	. .	5	1,213 5 0	1,200 0 0	. .	50 0
		1,000	430	38	. .	. .	497 13 0	490 0 0	. .	50 0
		3,000	435	38	. .	. .	1,509 1 0	1,500 0 0	. .	50 0
		1,000	492	46	. .	. .	604 7 10	600 0 0	. .	60 0
		1,000	515	31	. .	. .	411 7 9	400 0 0	. .	40 0
		2,000	982	39	. .	. .	974 4 10	970 0 0	. .	50 0
	An actual claim, Comparative Statement published by the Provident in 1841. — Provident .	1,000	1826	. .	. .	. .	497 9 10	497 9 10	. .	50 0
	Atlas . .	1,000	1826	. .	. .	. .	287 13 4	287 13 4	. .	33 0
	Rock * . .	1,000	1825	. .	. .	. .	196 0 0	196 0 0	. .	20 0
	Guardian .	1,000	1826	. .	. .	. .	138 9 9	138 9 9	. .	16 0
	Royal Exchange	1,000	1806	. .	. .	. .	Nil.			
	Globe . .	1,000	1806	. .	. .	. .	Nil.			
	Pelican . .	1,000	1826	. .	. .	. .	Nil.			

* Note appended to statement—that this is not the highest class of "Rock" Bonus.

	Other statement of claim. Hope	5,000	1822					250 0 0	250 0 0			5 0
	Other statement of claim. Eagle	5,000	1825					339 19 11	339 19 11			7 0
	Other statement of claim. Provident	5,000	1822					1,867 10 6	1867 10 6			40 0
1806	Rock					4						35 0
1815	Scottish Amicable	1,000	1826			1832		105 0 0				Mean age of policy.
			1827					90 0 0				
			1828					75 0 0	Payable at death—age not given.			
			1829					60 0 0				
			1830					45 0 0				
			1831					30 0 0				
			1832					25 0 0				
	Scottish Widows	1,000	1815			1839		587 0 0				
			20					345 0 0	Payable at death.			
			25					259 0 0				
			30					174 0 0				
			35					80 0 0				
	Union											16 9

* Several of these must have become claims and will have been paid in full at this date.

The foregoing Tabular arrangement of Bonuses is made from such data as were accessible to the writer for the purpose. This is to caution the reader against statements of Bonuses at such a per centage on the sum insured or the premium. Allowing that the Bonus *declared* will be actually paid at that reversionary period when claims are to be expected, it must be observed that a declared Bonus is a reversion payable at death, the present value of which, for ages under thirty-five only average about forty-five per cent. of the reversionary or declared value. So that a third or fourth quinquennial or septennial Bonus is a far different *nett* amount from a first Bonus under ordinary circumstances, that is, supposing the life is advanced in proportion to the progress or accession of Bonuses on the Policy.

AMICABLE.—Under the new Charter the value of a share, in case the Policy become a claim before April 5, 1837, is £250; between 1837 and 1841, it is also £250 minimum, and may be more: after 1841 £200 is the guarantee *minimum* value per share. The above is estimated on a life, aged 55, on January 1, 1837; sum insured £200; annual premium, £6 18*s*.

TABLE showing the Addition to be made to each Sum of £100, assured by THE EQUITABLE SOCIETY, when it shall become a claim, agreeably to Orders of General Courts, holden in the years 1782, 1786, 1791, 1792, 1795, 1800, 1809, 1819, 1829, and 1839.

DATE OF ASSURANCE.	ADDITION MADE IN										WHOLE ADDITION.
	1782.	1786.	1791.	1792.	1795.	1800.	1809.	1819.	1829.	1839.	
	£ s. d	£ s. d	£ s. d	£ s. d	£ s. d	£ s. d	£ s.	£ s.	£ s.	£ s.	£ s.
* Before May 1, in the year 1777	7 10 0	9 0 0	15 0 0	32 0 0	19 0 0	48 0 0	82 10	107 10	159 0	157 10	637 0
1779	4 10 0	7 0 0	13 0 0	28 0 0	17 0 0	44 0 0	77 10	102 10	153 0	152 10	599 0
1784	..	2 0 0	8 0 0	18 0 0	12 0 0	34 0 0	65 0	90 0	138 0	140 0	507 0
1785	..	1 0 0	7 0 0	16 0 0	11 0 0	32 0 0	62 10	87 10	135 0	137 10	489 10
1786	..	..	6 0 0	14 0 0	10 0 0	30 0 0	60 0	85 0	132 0	135 0	472 0
1787	..	..	5 0 0	12 0 0	9 0 0	28 0 0	57 10	82 10	129 0	132 10	455 10
1788	..	..	4 0 0	10 0 0	8 0 0	26 0 0	55 0	80 0	126 0	130 0	439 0
1789	..	..	3 0 0	8 0 0	7 0 0	24 0 0	52 10	77 10	123 0	127 10	422 10
1790	..	..	2 0 0	6 0 0	6 0 0	22 0 0	50 0	75 0	120 0	125 0	406 0
1791	..	..	1 0 0	4 0 0	5 0 0	20 0 0	47 10	72 10	117 0	122 10	380 10
1792	..	..	..	2 0 0	4 0 0	18 0 0	45 0	70 0	114 0	120 0	373 0
1793	..	..	..	..	3 0 0	16 0 0	42 10	67 10	111 0	117 10	357 10
1794	..	..	..	..	2 0 0	14 0 0	40 0	65 0	108 0	115 0	344 0
1795	..	..	..	..	1 0 0	12 0 0	37 10	62 10	105 0	112 10	330 10
1796	..	..	..	..	..	10 0 0	35 0	60 0	102 0	110 0	317 0
1797	..	..	..	..	..	8 0 0	32 10	57 10	99 0	107 10	304 10
1798	..	..	..	..	..	6 0 0	30 0	55 0	96 0	105 0	292 0
1799	..	..	..	..	..	4 0 0	27 10	52 10	93 0	102 10	279 10
1800	..	..	..	..	..	2 0 0	25 0	50 0	90 0	100 0	267 0
1801	..	..	..	..	..	..	22 10	47 10	87 0	97 10	254 10
1802	..	..	..	..	..	..	20 0	45 0	84 0	95 0	244 0
1803	..	..	..	..	..	..	17 10	42 10	81 0	92 10	233 10
1804	..	..	..	..	..	..	15 0	40 0	78 0	90 0	223 0
1805	..	..	..	..	..	..	12 10	37 10	75 0	87 10	212 10
1806	..	..	..	..	..	..	10 0	35 0	72 0	85 0	202 0
1807	..	..	..	..	..	..	7 10	32 10	69 0	82 10	191 10
1808	..	..	..	..	..	..	5 0	30 0	66 0	80 0	181 0
Before the 8th December, 1809	..	..	..	..	..	..	2 10	27 10	63 0	77 10	170 10
On or after 8th December, 1809	..	..	..	..	..	..	..	27 10	63 0	77 10	168 0
1810	..	..	..	..	..	..	..	25 0	60 0	75 0	160 0
1811	..	..	..	..	..	..	..	22 10	57 0	72 10	152 0
1812	..	..	..	..	..	..	..	20 0	54 0	70 0	144 0
1813	..	..	..	..	..	..	..	17 10	51 0	67 10	136 0
1814	..	..	..	..	..	..	..	15 0	48 0	65 0	128 0
1815	..	..	..	..	..	..	..	12 10	45 0	62 10	120 0
1816	..	..	..	..	..	..	..	10 0	42 0	60 0	112 0

Date of Assurance.

	Policy No.	From			1839.	WHOLE ADDITION.
1817	1 to 164	Jan. 1 1817 to Apr. 24 1817	Admitted to complete 5000 oldest Assurances.	Dec. 31, 1831	20 0	20 0
1818	165 to 660	Apr. 24 1817 to Apr. 16 1818		Dec. 31, 1832	17 10	17 10
1819	661 to 1019	Apr. 18 1818 to Feb. 4 1819		Dec. 31, 1833	15 0	15 0
1820	1021 to 1413	Feb. 5 1819 to Jan. 3 1820		Dec. 31, 1834	12 10	12 10
1820	1415 to 1856	Jan. 7 1820 to Dec. 22 1820		Dec. 31, 1835	10 0	10 0
1821	1857 to 2245	Dec. 23 1820 to Nov. 30 1821		Dec. 31, 1836	7 10	7 10
1822	2247 to 2699	Dec. 1 1821 to Mar. 7 1823		Dec. 31, 1837	5 0	5 0
1823 and 1824	2700 to 3082	Mar. 7 1823 to May 24 1824		Dec. 31, 1838	2 10	2 10

* If the Policy is dated on or after the 1st of May, the whole Addition, prior to 1801, will be £2 less than it is stated to be in the last column.

The Equitable undertake to purchase or Discount Bonuses according to a published Table which appears to be at 4 per cent., Northampton Rates.

THE "ROCK."

Table of the Addition made to each sum of £100 assured for the term of Life, and to be paid when the policy shall become a claim.

Date of Policy.	Addition in 1819, 2 per Cent.	Addition in 1826, 1 per Cent.	Addition in 1833, 1l. 6s. per Cent.	Addition in 1840, 15s. per Cent.	Total Addition.
	£ s.	£ s.	£ s.	£ s.	£ s.
On or before 31st Dec. 1806	24 0	19 0	33 16	24 15	101 11
1807	22 0	18 0	32 10	24 0	96 10
1808	20 0	17 0	31 4	23 5	91 9
1809	18 0	16 0	29 18	22 10	86 8
1810	16 0	15 0	28 12	21 15	81 7
1811	14 0	14 0	27 6	21 0	76 6
1812	12 0	13 0	26 0	20 5	71 5
1813	10 0	12 0	24 14	19 10	66 4
1814	8 0	11 0	23 8	18 15	61 3
1815	6 0	10 0	22 2	18 0	56 2
1816	4 0	9 0	20 16	17 5	51 1
1817	2 0	8 0	19 10	16 10	46 0
1818	..	7 0	18 4	15 15	40 19
1819	..	6 0	16 18	15 0	37 18
1820	..	5 0	15 12	14 5	34 17
1821	..	4 0	14 6	13 10	31 16
1822	..	3 0	13 0	12 15	28 15
1823	..	2 0	11 14	12 0	25 14
1824	..	1 0	10 8	11 5	22 13
1825	..	..	9 2	10 10	19 12
1826	..	..	7 16	9 15	17 11
1827	..	..	6 10	9 0	15 10
1828	..	..	5 4	8 5	13 9
1829	..	..	3 18	7 10	11 8
1830	..	..	2 12	6 15	9 7
1831	..	..	1 6	6 0	7 6
1832	..	..	..	5 5	5 5
1833	..	..	..	4 10	4 10
1834	..	..	..	3 15	3 15
1835	..	..	..	3 0	3 0
1836	..	..	..	2 5	2 5
1837	..	..	..	1 10	1 10
1838	..	..	..	0 15	0 15

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A DISSERTATION

THE RITS TO THE SEA-URCHIN.